TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~380.~~ 106

THE STEAMSHIP "FANNIE"—THE BALTIMORE AND SAVANNAH STEAMSHIP COMPANY, CLAIMANT, APPELLANT,

vs.

THE SCHOONER "ELLEN FORRESTER"—DANIEL ALLEN ET AL., CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED DECEMBER 2, 1869.

6.

SUPREME COURT OF THE UNITED STATES.

No. 300.

THE STEAMSHIP "FANNIE"—THE BALTIMORE AND SAVANNAH STEAMSHIP COMPANY, CLAIMANT, APPELLANT,

vs.

THE SCHOONER "ELLEN FORRESTER"—DANIEL ALLEN ET AL., CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print.
Style of court	1	1
RECORD FROM DISTRICT COURT.		
Libel	3	1
Attachment	6	3
Marshal's return	7	4
Advertisement	7	4
Claim	8	4
Stipulation	9	4
Answer	10	5
Petition	13	6
Amended libel	14	7
Deposition of Daniel Allen	19	9
Solomon G. Buckminster	25	12
Jacob S. Bryant	33	16
Wallace Allen	36	17
John S. Allen	37	17
John Henry Williams	37	18
Columbus Shorter	48	23
Michael Lyons	54	26
Wallace Thompson	55	26
Decree of district court	56	27
Appeal	57	27
Appeal bond	58	28
Deposition of John J. Johnson	60	29
John R. Billups	70	34
Agreement	81	39

	Original.	Print.
Return of commission	82	39
Deposition of David T. Warren	84	40
Thomas Warren	86	41
George Tolman	88	42
Interrogatories to be propounded to Solomon G. Buckminster	90	43
Interrogatories to Thomas Warren, George Tolman, David T. Warren	91	44
Commission	93	44
Deposition of John S. Beacham	96	46
James A. Skinner	99	48
L. J. Applegarth	102	49
Solomon G. Buckminster	105	51
James Carey Coale	115	55
John L. Reed	121	58
Decree of circuit court	123	59
Appeal to Supreme Court	124	60
Appeal bond	124	60
Clerk's certificate	127	61

1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the United States court-house, in the city of Baltimore, on the first Monday in April, (being the fifth day of the same month,) in the year of our Lord one thousand eight hundred and sixty-nine—present, the Honorable Salmon P. Chase, Chief Justice of the Supreme Court; William F. Giles, judge, Maryland district; Andrew Sterett Ridgely, esquire, attorney; Washington Bonifant, esquire, marshal; James W. Chew clerk—among other were the following proceedings, to wit:

THE OWNERS OF THE STEAMSHIP FANNIE
vs.
DANIEL ALLEN AND OTHERS.

Be it remembered that heretofore, to wit, on the second day of November, in the year of our Lord one thousand eight hundred and sixty eight, the owners of the steamship Fannie, by Andrew Sterett Ridgely, esquire, their proctor, filed in the circuit court here a record from the district court of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

Record.

2 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in June, (being the second day of the same month,) in the year of our Lord one thousand eight hundred and sixty-eight—present, the Honorable William F. Giles, judge, Maryland district; Andrew Sterett Ridgely, esquire, attorney; Washington Bonifant, esquire, marshal; James W. Chew, clerk—among other were the following proceedings, to wit:

Libel.—Filed April 30, 1868.

DANIEL ALLEN, J. A. HOPKINS, WILLIAM DILE, John Robbins, Richard Warren, Hardy Lane, William Warren, Martin V. Warren, Samuel Small, & Rebecca Shaw, owners of the schooner Ellen Forrester,
vs.
THE STEAMER FANNIE.
} Libel.—In admiralty.

3 To the Honorable W'm Fell Giles, judge of the district court of the United States for the district of Maryland:

The libel of Daniel Allen, J. A. Hopkins, William Dile, John Robbins, Richard Warren, Hardy Lane, William Warren, Martin V. Warren, Samuel Small, and Rebecca Shaw, owners of the schooner Ellen Forrester, hereinafter mentioned, exhibit this their libel against the steamer "Fannie," (whereof J. J. Johnson is or lately was master,) now lying in the port of Baltimore, in the district of Maryland aforesaid, & within the admiralty & maritime jurisdiction of this honorable court, her en-

gine, machinery, boats, tackle, apparel, & furniture, & against all persons lawfully intervening for their interest therein, in a cause of collision, civil & maritime.

And thereupon the said libellants do allege & articulately propound as follows, to wit:

1st. [First.] That your libellants, before & at the time of the collision hereinafter mentioned, were the owners of the said schooner called the "Ellen Forrester," with her boats, tackle, apparel, & furniture, which said schooner was enrolled and licensed for the coasting trade, & was employed by your libellants in the business of commerce & navigation between ports & places in different States of the United States.

2nd. That on the 28th day of April, A. D. 1868, the aforesaid schooner, being tight, staunch, well manned & provided, sailed from the port of Baltimore, in the State of Maryland, with a valuable cargo of
4 pig iron, on a voyage to the port of Providence, in the State of Rhode Island.

3rd. [Third.] That during the said voyage, to wit, about 10 minutes before two o'clock in the morning of the 29th day of April, A. D. 1868, the said schooner being then about four miles easterly from the light-house of Point Lookout, with the wind about northeast, & the said schooner standing on her course, lying south by east one-half east, the mate of said schooner, who then had the watch & was the commanding officer on deck, discovered a steamer approaching, but saw no lights or signals on or from said steamer, & before in the darkness he was able to ascertain the bearing & direction of said steamer, or take any steps to avoid a collision with her, said steamer ran against & struck the said schooner on her port bow, crushing & so greatly injuring the same that the said schooner immediately began to fill with water, & soon after, and within ten minutes of such collision, in spite of the most strenuous exertions of all on board to keep her afloat, sunk & was with her cargo totally lost; her officers & crew having with difficulty saved their lives by taking to the boat of said schooner.

4th. [Fourth.] That the said steamer, by which the said damage had been done, proved to be the "Fannie" aforesaid, under the command of J. J. Johnson, as master thereof, & of about 500 tons burthen, bound on a voyage from Savannah, Georgia, to said port of Baltimore; that at the time when the steamer was first discovered from the "Ellen Forrester," as hereinbefore mentioned, the said "Ellen Forrester" carried a red light in the port rigging & a green light in the starboard rig-
5 ging, & the said lights could easily have been seen from said steamer, &, if she had kept a good look-out, must have been seen by her at a considerable distance, & in season to have enabled her to give way for the said "Ellen Forrester," as she was bound to do & thereby to prevent a collision therewith.

5th. [Fifth.] That at the time when a collision of said steamer with said schooner first became imminent, if the said steamer had had a proper watch on deck, steps might have been taken to have enabled said steamer by changing her course to pass the said schooner in safety, or by stopping her engines to have slackened her speed, & to have greately diminished the violence of the blow; but instead of so doing, the said steamboat "Fannie" kept on her previous course, & neither before nor after the collision slackened her speed or made any effort to prevent the collision or weaken the force thereof, or to save any of the persons or property on board said schooner.

6th. [Sixth.] That at the time when the danger of a collision was first perceived as aforesaid from the "Ellen Forrester," it was impossible for

her to get out of the way of the said steamship "Fannie," nor were there any means to which she could have resorted with propriety for that purpose.

7th. [Seventh.] That at the time of the loss of the said schooner "Ellen Forrester" & her cargo, these libellants were the true & lawful owners of the said schooner; & certain J. H. J. L. Reed & T. J. Case, partners trading as Stickney & Co., were the owners of her said cargo; & that the schooner was of the value of about eight thousand dollars, ($8,000,)
6 & the said cargo was of the value of six thousand dollars ($6,000) or thereabouts; and that by reason of the careless, negligent, unskillful, & improper management of the said steamship "Fannie," & of the collision thereby occasioned of the said steamship with the said schooner "Ellen Forrester," the libellants as owners of the said schooner as aforesaid, & the owners of said cargo as aforesaid, have sustained damage to the amount of the value of said schooner & cargo as aforesaid, to wit, to the amount of fourteen thousand dollars or thereabouts, for which they claim reparation in this suit.

8th. [Eighth.] That all and singular the premises are true.

Wherefore the libellants pray that process in due form of law may issue against the said steamship "Fannie," her engine, machinery, boats, tackle, apparel, & furniture, & that this honorable court will pronounce for the damages aforesaid & decree the same to be paid, with costs, & for such other & further relief & redress as to right and justice may appertain & the court is competent to give in the premises.

DANIEL ALLEN,
For self and other owners of said Schooner "Ellen Forrester."

HENRY STOCKBRIDGE,
Proctor for Libellants.

Sworn to and subscribed before me this 30th April, A. D. 1868.
[SEAL.] ROB. LYON ROGERS,
U. S. Commissioner.

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

7 [SEAL.] To the marshal for the Maryland district, greeting:

We command you that you attach, seize, take, and safely keep steamer "Fannie," her engine, machinery, boats, tackle, apparel, & furniture, to answer the libel of Daniel Allen, J. A. Hopkins, W'm Dell, John Robbins, Richard Warren, Hardy Lane, W'm Warren, Martin V. Warren, Samuel Small, & Rebecca Shaw, owners of schooner "Ellen Forrester," in a cause of collision, civil & maritime, and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room in the city of Baltimore, on the first Tuesday of June next, and have you then and there this writ.

Witness the honorable William F. Giles, judge of our said district court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and sixty-eight.

Issued 30th day of April, 1868.
[H. S.] JAMES W. CHEW,
Clerk Dist. Court.

Marshal's return.

Atta'd April 30, 1868. Advertised. Released same day by stip.
W. BONIFANT,
U. S. Marshal.

Advertisement.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Whereas on the 30th day of April, 1868, Daniel Allen and
8 others filed their libel, No. 14, June term, in the United States district court for the district of Maryland against the steamer "Fannie" in a cause of collision:

And whereas by virtue of process in due form of law to me directed, returnable on the first Tuesday of June next, I have seized and taken the said steamer, and have the same in my custody:

Notice is hereby given that a district court will be held at the United States court-room at the city of Baltimore on the first Tuesday in June next, for the trial of the said premises, and the owner or owners, and all persons who may have or claim any interest are hereby cited to be and appear at the time and place aforesaid, to show cause, if any they have, why a final decree should not pass as prayed.

My 19—14t.] W. BONIFANT,
U. S. Marshal.

Claim.

To the Honorable William Fell Giles, judge of the district court of the United States for the district of Maryland:

Washington Booth, of the city of Baltimore, State of Maryland, president of the Baltimore and Savannah Steamship Company, intervening for the interest of said company in the steamship Fannie, her tackle, apparel, and furniture, appears before this honorable court and claims the said steamship, her tackle, apparel, and furniture, and states that the Baltimore & Savannah Steamship Company are the true and bona-fide owners thereof, and that no other person is the owner thereof.

9 And thereupon the said claimant prays that this honorable court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

WASH'N BOOTH,
Pres'd't B. & S. S. S. Comp'y.

Sworn to before me this day of May, 1868.
ISAAC BROOKS, JR.,
United States Comm'r in & for the Dist. of Maryland.

Stipulation.—Filed May 2, 1869.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered that on this 2nd day of May, in the year of our Lord one thousand eight hundred and sixty-eight, before me, Isaac Brooks, jr., a commissioner appointed by the circuit court of the United States for the fourth circuit in and for the Maryland district, pursuant

to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," appears Washington Booth & Jacob Brandt, of the district aforesaid, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound in the sum of twenty-eight thousand dollars for the claimant of the steamship Fannie, unto
10 Daniel Allen and others, owners of the sch'r Ellen Forrester, to perform and fulfil the final order and decree of the said district court, and in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit, in and for the Maryland district, and in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now depending in the said district court, wherein the said Daniel Allen and others, owners of the sch'r Ellen Forrester, are libellants, and the claimant of the said steamship Fannie is respondent; and unless they so do, they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods, chattels, lands, and tenements, wheresoever found or to be found.

Acknowledged before— ISAAC BROOKS, JR.,
U. S. Commissioner.

Answer.—Filed June 5, 1868.

In admiralty.

And now comes Washington Booth, president of the Baltimore and Savannah Steamship Company, owners of the steamer "Fannie," and for answer to the libel of Daniel Allen, J. A. Hopkins, William Dill, John Robbins, Richard Warren, Martin V. Warren, Samuel Small, Rebecca Shaw, against the said steamer doth allege and propound as follows:

1st. That the said Baltimore and Savannah Steamship Company are the owners of the said steamer Fannie and [and] that no other
11 person is the owner thereof.

2nd. That they have no personal knowledge of the matters alleged in the first article of the libel, and put the libellants to the proof of the same.

3rd. That the matters and things alleged in the 2nd ("3rd") article of said libel are therein falsely alleged and pleaded, for the fact is that on the morning of the 29th of April last, about one and a half o'clock, the steamer "Fannie" was steering a north by west course up the Chesapeake Bay, on a voyage from Savannah to Baltimore, when those in charge of her saw the lights of a schooner about one point on the "Fannie's" port bow, some four or five miles distant, bound down the bay in apparently a south by east course. The courses of the respective vessels were such at the time as to afford ample room for them to pass without danger of collision, and they certainly would have done so had the schooner adhered to the course she was on. Nevertheless, the wheel of the "Fannie" was ported so as to throw them farther apart. A short time thereafter elapsed, when the schooner's course was altered to the eastward, thus bringing her across the steamer's bows, which seeing, and fearing it would produce a collision, to avoid the same, those in charge of the "Fannie" starboarded her wheel so as to change her course to the westward of the schooner's, when suddenly the latter fell away from the

wind westward across the newly-taken course of the steamer. The steamer's wheel was then put hard aport, but by this time the two vessels were so near that it was not possible for the steamer to avoid the imminent collision, and their port bows struck in passing.

12 4th. That the said steamer, when she left the port of Savannah, on her voyage to Baltimore as aforesaid, as also when the said collision occurred, was in every respect fully equipped and provided, properly officered and manned; that the lights were such as the law required, and were fully displayed, and in their proper places, both at the moment of and long before the collision. That proper and efficient look-out was during the whole of said voyage kept on board of her; and that the said collision was produced solely by the ignorance, want of skill, and mismanagement of those in charge of the schooner.

5th. That the respondent admits that the said schooner had her proper lights, properly displayed as alleged in 4th article of libel, and were seen by those in charge of the "Fannie" as aforesaid.

6th. That everything that the laws of the sea demand, and that proper prudence and caution require, was done on board the "Fannie" to avoid the said collision.

7th. That as to the allegations contained in said libel's 7th article in reference to the cargo of the said schooner, and their value, these respondents do not admit, but being ignorant in relation thereto, put the libellants to the proof of the same, and they deny most emphatically the allegations of said article, that the collision was produced by the careless, negligent, unskillful, and improper management of those in charge of the said steamer "Fannie," or that by reason thereof any damage has accrued to the said libellants.

8th. That all and singular the premises are true.

13 Wherefore these respondents pray that the said libel may be dismissed with their proper costs to these respondents in that behalf incurred.

WASH'N BOOTH,
Pres'd't B. & S. S. S. Comp'y.

AND'W STERETT RIDGELY,
Proctor for Balto. & Sav'h St. Sh. Co.

Subscribed and sworn to before me this 5th day of June, 1868.
ISAAC BROOKS, JR.,
U. S. Commissioner.

Petition.—Filed June 16, 1868.

In the district court of the United States for the district of Maryland.
In admiralty.

DANIEL ALLEN & OTHERS
vs.
STEAMSHIP "FANNIE" & OWNERS.

The libellants in this case humbly show that the libel heretofore filed in this cause was filed at the instance of Daniel Allen, late master of the schooner "Ellen Forrester" named in said libel; that at the time of filing said libel he had not access to the "enrollment" of said schooner, & gave the names of the owners of said schooner from memory only; that having since succeeded in referring to the enrollment he finds that the owners of said schooner were as follows, viz:

	Dan'l Allen,	$\frac{1}{4}$ thereof.	
	Martin V. Warren,	$\frac{1}{24}$ "	
	Rebecca S. Warren,	$\frac{1}{24}$ "	
	John Robbins,	$\frac{1}{12}$ "	
14	Stephen Thurston,	$\frac{1}{12}$ thereof.	
	Richard Warren,	$\frac{2}{33}$ "	
	Estate of Moses Stinson,	$\frac{2}{33}$ "	
	Hardy Lane,	$\frac{2}{33}$ "	
	Sam'l Small,	$\frac{2}{33}$ "	
&	John P. Johnson,	$\frac{1}{33}$ "	of Deer Isle, State of Maine.
	B. Kimball,	$\frac{1}{22}$ "	of
&	Rebecca Shaw,	$\frac{1}{66}$ "	of Vassalboro, State of Maine.
	William Dile,	$\frac{1}{12}$ "	
&	J. A. Hopkins,	$\frac{1}{12}$ "	of Philadelphia, State of Pennsylvania.

They therefore pray that the said libel may be so amended as to make said owners the parties libellants therein; & as in duty bound, &c.

H. STOCKBRIDGE,
Proctor for Libellants.

Leave to amend granted as prayed.

Amended libel.—Filed 18 *June*, 1868.

In admiralty.

To the Hon. W'm Fell Giles, judge of the district court for the district of Maryland:

The amended libel of Daniel Allen, Martin V. Warren, Rebecca S. Warren, John Robbins, Stephen Thurston, estate of Moses Stinson, Hardy Lane, Samuel Small, John P. Johnson of Deer Isle in the State of Maine, D. Kimball, Rebecca Shaw of Vassalboro, State of Maine, William Dile & J. A. Hopkins of Philadelphia, in the State of Pennsylvania, owners of the schooner "Ellen Forrester," hereinafter mentioned; Daniel Allen, Solomon G. Buckminster, Jacob S. Bryant, Wallace Allen, John S. Allen, seamen on board said schooner "Ellen Forrester;" J. H. Stickney, J. S. Reed & T. J. Case, partners trading as Stickney & Co. of the city of Baltimore, owners of the cargo of said schooner "Ellen Forrester," by leave of the court here first had and obtained, exhibit this their amended libel against the steamer "Fannie," whereof J. J. Johnson is, or lately was, master, now lying in the port of Baltimore, in the district of Maryland aforesaid, & within the admiralty & maritime jurisdiction of this honorable court, her engine, machinery, boat, tackle, apparel, & furniture, & against all persons lawfully intervening for their interest therein, in a cause of collision, civil & maritime.

15

And thereupon the said libellants do allege & articulately propound as follows, viz:

1st. That your libellants hereinbefore named as the owners of the said schooner "Ellen Forrester," before & at the time of the collision hereinafter mentioned, were the owners of the said schooner called the "Ellen Forrester," with her boats, tackle, apparel, & furniture, which said schooner was enrolled and licensed for the coasting trade, & was employed by your said libellants in the business of commerce and navigation between ports & places in different States of the United States; that your libellants hereinafter mentioned as seamen on board said

schooner were, at the time of the collision hereinafter mentioned, seamen on board of said schooner; & that your libellants, the said Stickney & Co., were, at the time of the collision hereinafter mentioned, the
16 owners of the cargo on board of said schooner "Ellen Forrester."

2nd. That on the 28th day of April, A. D. 1868, the aforesaid schooner being tight, staunch, well manned & provided, sailed from the port of Baltimore, in the State of Maryland, with a valuable cargo of pig iron, on a voyage to the port of Providence, in the State of Rhode Island.

3d. That during the said voyage, viz, about ten minutes before two o'clock in the morning of the 29th day of April, A. D. 1868, the said schooner being then about four miles easterly from the light-house at Point Lookout, with the wind about northeast, the said schooner standing on her course, lying south by east one-half east, the mate of the said schooner, who then had the watch & was the commanding officer on deck, discovered a steamer approaching, but saw no lights or signals on or from said steamer; & before, in the darkness, he was able to ascertain the bearing and direction of said steamer, or take any steps to avoid a collision with her, said steamer ran against and struck the said schooner on her port bow, crushing and so greatly injuring the same, that the said schooner immediately began to fill with water, & soon after, & within ten minutes of such collision, in spite of the most strenuous exertions of all on board to keep her afloat, sunk, & was with her cargo totally lost; her officers & crew having with difficulty saved their lives by taking to the boat of said schooner.

4th. That the said steamer, by which the said damage had been done, proved to be the "Fannie" aforesaid, under the command of J. J.
17 Johnson, as master thereof, & of about 500 tons burthen, bound on a voyage from Savannah, Georgia, to said port of Baltimore; that at the time when the steamer was first discovered from the "Ellen Forrester," as hereinbefore mentioned, the said "Ellen Forrester" carried a red light suspended in the port rigging, & a green light in the starboard rigging, & the said lights could easily have been seen from said steamer, & if she had kept a good look-out, must have been seen by her at a considerable distance, & in season to have enabled her to give way for the said "Ellen Forrester," as she was bound to do, & thereby to prevent a collision therewith.

5th. That at the time when a collision of said steamer with said schooner first became imminent, if the said steamer had had a proper watch on deck, steps might have been taken to have enabled said steamer by changing her course to pass the said schooner in safety, or by stopping her engines to have slackened her speed, & to have greatly diminished the violence of the blow; but instead of so doing, the said steamboat "Fannie" kept on her previous course, & neither before nor after the collision slackened her speed or made any effort to prevent the collision or weaken the force thereof, or to save any of the persons or property on board said schooner.

6th. That at the time when the danger of a collision was first perceived as aforesaid from the "Ellen Forrester," it was impossible for her to get out of the way of the said steamship "Fannie," nor were there any means to which she could have resorted with propriety for that purpose.

18 7th. That at the time of the loss of the said schooner "Ellen Forrester," & her cargo, the libellants hereinbefore named as owners of said schooner were the true & lawful owners thereof; the said J. H. Stickney, J. L. Reed, T. J. Case, partners as aforesaid, were the owners of her said cargo, & these libellants hereinbefore named as sea-

men on said schooner were the owners of the respective clothing & personal effects thereon; that the schooner was of the value of about ($8,000) eight thousand dollars; said cargo was of the value of six thousand dollars ($6,000) or thereabout, & said clothing & personal effects were of about the value following, that is so say: That of Solomon G. Buckmister, of about the value of one hundred dollars; that of Jacob S. Bryant was of about the value of one hundred dollars; that of said Wallace Allen, of about the sum of thirty ($30) dollars; that of John S. Allen, of about the value of thirty-five ($35) dollars; that the provisions & stores of the said schooner were of about the value of one hundred ($100) dollars; the freight on board said schooner of about the value of ($300) three hundred dollars, & the clothing & personal effects of the said Daniel Allen of about the value of two hundred & fifty ($250) dollars; & that by reason of the careless, negligent, unskillful, & improper management of the said steamship "Fannie," and of the collision thereby occasioned of the said steamship with the said schooner "Ellen Forrester," the libellants, as owners of the said schooner aforesaid, & of the said ship stores, provisions, & freight, & as owners of said cargo as aforesaid, and as owners of said clothing & personal effects as
19 aforesaid, have sustained damage to the amount of the value of said schooner, cargo, provisions, freight, clothing, & personal effects, to them respectively belonging as aforesaid, viz, to the amount of fifteen thousand, ($15,000,) or thereabouts, for which they claim reparation in this suit.

8th. That all and singular the premises are true.

Wherefore these libellants pray that this honorable court will pronounce for the damages aforesaid, & decree the same to be paid with costs, and for such other & further relief and redress as to right & justice may appertain & the court is competent to give in the premises.

DANIEL ALLEN.

H. STOCKBRIDGE, *Proctor for Libellants.*

Sworn to by Daniel Allen before me this 18th June, 1868, in open court.

JAMES W. CHEW,
Clerk District Court.

Deposition of witnesses on the part of the libellants, taken before Isaac Brooks, jr., esq., U. S. Commissioner for Maryland district, at the city of Baltimore, on the first day of May, 1868.

Daniel Allen, witness for libellants, makes oath, deposeth, and saith, as follows, to wit:

I reside in the town of Deer Isle, in the State of Maine. I am a seamen. I came to Baltimore on account of having my vessel sunk, and I design to leave to-morrow (May 2nd) afternoon, if I get my business settled. I know the Ellen Forrester; she was
20 built in Essex, Massachusetts, in 1861. She is a vessel of sixty-nine tons & $\frac{15}{100}$. I was master and part owner of said vessel. She arrived in Baltimore about the 16th of April, from Newtown City, with one hundred and fifty barrels of cement. We discharged our cement, and hauled over to Locust Point, and from there came to Bowley's wharf and engaged freight, and then dropped down to the Lazaretto furnace where we took in a freight of one hundred tons of pig iron. We took the pig iron for Providence, Rhode Island. We left on Tuesday, the 28th of April, about half past ten. We went down the bay without anything happening. At twelve o'clock on Tuesday night, the 28th of

April, my watch was out & I was relieved by the mate. We were standing south by east one-half east. The wind was about northeast; about a seven-knot breeze. The weather was clear; the sky was slightly overcast. We were about south-southeast from Cove Point light-house, distant about eight miles. I went below about half past twelve. I laid down in my berth. About half past one o'clock I dropped into a sort of drowse and could hear what was going on. A short time after this I was roused up by hearing a crash & feeling the shock of the vessel that struck her. I then got out of my berth and went on deck, as quickly as possible. I saw a steamer then astern, just clear of us and heading in the opposite direction. I saw that the vessel had been struck by the steamer. The bowsprit, the jibboom, and all her head gear had been carried away. The steamer kept right on and was soon out of sight; the mate got a lantern, and we went forward to see what the dam-
21 ages were. So far as we could see, the rail and top of her bow were stove in. We then went down aft, and took up a scuttle in the cabin floor to see if there was any water in; at this time there was none aft. I then went forward in the forecastle; there was a slide in the aft part of the bulkhead, so that I could see into the hold. I looked in and saw that there was about two feet of water in there, and coming in fast. I then went on deck and one of the men had just come out of the cabin; said she was filling up fast aft. I then went down aft myself and found it to be the case, and gaining rapidly. I saw then the only chance for our escape was to take the boat, and gave orders to have it cleared away and lowered. By the time they got the boat cleared away and lowered, the top of the schooner's bow was nearly level with the water. The men got into the boat as soon as possible. I went below to see the time and get what things I could; it was then about five minutes to two o'clock; the water was then up over the cabin floor then. I then ran on deck and saw that her bow was under water. I got into the boat and we shoved off. As near as I can tell in one minute from the time we shoved off the schooner sunk, in from seven to eight fathoms, I should judge; the surf and spray from the vessel nearly reached our boat. We were not over the length of the schooner from her, and had only gotten out one oar when she sunk. I should judge the schooner went down from five to ten minutes after she was struck; it was not over ten minutes at the outside. The steamer did not stop, nor
22 did she offer any assistance. We could not tell the exact bearings, but we were eastwardly of the Point Lookout light-house; we arrived there about half past three o'clock in the morning. The Point Lookout light was visible all the time we were in the boat. We stopped at Point Lookout until Wednesday night about eleven o'clock, and then came to Baltimore on the steamer Columbia, arriving about eight o'clock Thursday morning, the 30th of April. I saved about twenty-five dollars' worth of clothing, besides what I had on. The remainder of my clothes I lost—of the value of about two hundred dollars. I was not able to save my quadrant, charts, and log-book. We had such on board; they were lost; I saved one chart of the coast of North America, and lost five charts. Three of the charts were nearly new, and two had been used. A new chart costs about five dollars; these were worth about four dollars apiece on an average. I paid at the rate of seventy-five hundred dollars for the schooner last November; that is to say, I bought one-quarter of her at that time, for which I paid eighteen hundred and seventy-five dollars. We afterwards put on new rigging and painted her, which made her worth as much at the time of the collision as when we bought her. After reaching Baltimore I had an interview with the officers of the Fannie.

(The witness was here asked what passed at the interview between him and the officers of the steamship Fannie. The proctor for the respondent objects to the question and answer; also to any statements made by either party on that occasion, unless shewn to be made by, or in the presence of, the owners of the Fannie.)

Answer. I went to the steamer Fannie to see the captain on
23 Thursday morning. I asked him if he came up the bay the night before last. After hesitating about it, he said "he came up part way." I then said, "You got foul of a vessel, didn't you?" He said that he did not know that he had any right to tell me. I then asked him "how it happened that he did get foul of the vessel." He said "that was his business." I then said to him, "You then do admit that you did get foul of a vessel." He said, "No, I will not admit it to you." That was all that was said; he did not seem disposed to talk, and I then left.

(All of the above answer excepted to by the proctor for respondent.)

I tried to look at the outside of the schooner. There was some considerable sea and it was pretty dark. I could not see, by the light of the lantern, what the damage was that was done to the boat. The schooner, her boats, tackle, apparel, and furniture were worth seven thousand five hundred dollars. The provisions were worth one hundred dollars, which I consider a low figure. My effects were worth two hundred and fifty dollars. The freight due for the cargo, if it had been delivered at Providence, would have been three hundred dollors. The effects of the men I don't know the value of.

Cross-examined.

We left Baltimore on Monday, the morning preceeding the collision, at about half past ten o'clock. Our sole cargo consisted of one hundred tons of pig iron. The vessel was under my command. I am a part owner. I owned a fourth of her at the time, which was insured in Rockland in the sum of fourteen hundred dollars, which has not yet been paid. I had no interest in the cargo but my proportion of freight.
24 The freight was not insured. I am not positive, of my own personal knowledge, whether the cargo is insured or not. I have not visited the scene of the disaster since it occurred. I have had no means of doing so. No efforts have been made, to my knowledge, to raise or recover either the vessel or cargo. I have been following the sea, off and on, ever since I was thirteen years old. I was never in c of a vessel until last November, when I took command of t Forrester, and have been in command of her from that time collision. During that time I made three or four voyages. voyage during which the collision occurred we had no pilot o other than the mate and myself. My mate's name is Solomo minster. I am not a licensed pilot, nor is the mate, to my kn I examined the Fannie to see if there were any marks on her, oc by the collision. I examined her on Thursday, the 30th of Apri. I did see marks on her port bow where she had been struck by something. I saw workmen engaged in repairing her at that place. My examination did not extend beyond her starboard side, and a portion of her port bow. I saw no other marks of collision or injury. I had charts.

Re-direct.

The deck of the Ellen Forrester, at the time of the collision, was about

April, my watch was out & I was relieved by the mate. We were standing south by east one-half east. The wind was about northeast; about a seven-knot breeze. The weather was clear; the sky was slightly overca t. We were about south-southeast from Cove Point light-house, distan about eight miles. I went below about half past twelve. I laid down in my berth. About half past one o'clock I dropped into a sort of drowse and could hear what was going on. A short time after this I was roused up by hearing a crash & feeling the shock of the vessel that struck her. I then got out of my berth and went on deck, as quickly as possible. I saw a steamer then astern, just clear of us and heading in the opposite direction. I saw that the vessel had been struck by the steamer. The bowsprit, the jibboom, and all her head gear had been carried away. The steamer kept right on and was soon out of sight; the mate got a lantern, and we went forward to see what the dam-
21 ages were. So far as we could see, the rail and top of her bow were stove in. We then went down aft, and took up a scuttle in the cabin floor to see if there was any water in; at this time there was none aft. I then went forward in the forecastle; there was a slide in the aft part of the bulkhead, so that I could see into the hold. I looked in and saw that there was about two feet of water in there, and coming in fast. I then went on deck and one of the men had just come out of the cabin; said she was filling up fast aft. I then went down aft myself and found it to be the case, and gaining rapidly. I saw then the only chance for our escape was to take the boat, and gave orders to have it cleared away and lowered. By the time they got the boat cleared away and lowered, the top of the schooner's bow was nearly level with the water. The men got into the boat as soon as possible. I went below to see the time and get what things I could; it was then about five minutes to two o'clock; the water was then up over the cabin floor then. I then ran on deck and saw that her bow was under water. I got into the boat and we shoved off. As near as I can tell in one minute from the time we shoved off the schooner sunk, in from seven to eight fathoms, I should judge; the surf and spray from the vessel nearly reached our boat. We were not over the length of the schooner from her, and had only gotten out one oar when she sunk. I should judge the schooner went down from five to ten minutes after she was struck; it was not over ten minutes at the outside. The steamer did not stop, nor
22 did she offer any assistance. We could not tell the exact bearings, but we were eastwardly of the Point Lookout light-house; we arrived there about half past three o'clock in the morning. The Point Lookout light was visible all the time we were in the boat. We stopped at Point Lookout until Wednesday night about eleven o'clock, and then came to Baltimore on the steamer Columbia, arriving about eight o'clock Thursday morning, the 30th of April. I saved about twenty-five dollars' worth of clothing, besides what I had on. The remainder of my clothes I lost—of the value of about two hundred dollars. I was not able to save my quadrant, charts, and log-book. We had such on board; they were lost; I saved one chart of the coast of North America, and lost five charts. Three of the charts were nearly new, and two had been used. A new chart costs about five dollars; these were worth about four dollars apiece on an average. I paid at the rate of seventy-five hundred dollars for the schooner last November; that is to say, I bought one-quarter of her at that time, for which I paid eighteen hundred and seventy-five dollars. We afterwards put on new rigging and painted her, which made her worth as much at the time of the collision as when we bought her. After reaching Baltimore I had an interview with the officers of the Fannie.

(The witness was here asked what passed at the interview between him and the officers of the steamship Fannie. The proctor for the respondent objects to the question and answer; also to any statements made by either party on that occasion, unless shewn to be made by, or in the presence of, the owners of the Fannie.)

Answer. I went to the steamer Fannie to see the captain on
23 Thursday morning. I asked him if he came up the bay the night before last. After hesitating about it, he said "he came up part way." I then said, "You got foul of a vessel, didn't you?" He said that he did not know that he had any right to tell me. I then asked him "how it happened that he did get foul of the vessel." He said "that was his business." I then said to him, "You then do admit that you did get foul of a vessel." He said, "No, I will not admit it to you." That was all that was said; he did not seem disposed to talk, and I then left.

(All of the above answer excepted to by the proctor for respondent.)

I tried to look at the outside of the schooner. There was some considerable sea and it was pretty dark. I could not see, by the light of the lantern, what the damage was that was done to the boat. The schooner, her boats, tackle, apparel, and furniture were worth seven thousand five hundred dollars. The provisions were worth one hundred dollars, which I consider a low figure. My effects were worth two hundred and fifty dollars. The freight due for the cargo, if it had been delivered at Providence, would have been three hundred dollors. The effects of the men I don't know the value of.

Cross-examined.

We left Baltimore on Monday, the morning preceeding the collision, at about half past ten o'clock. Our sole cargo consisted of one hundred tons of pig iron. The vessel was under my command. I am a part owner. I owned a fourth of her at the time, which was insured in Rockland in the sum of fourteen hundred dollars, which has not yet been paid. I had no interest in the cargo but my proportion of freight.
24 The freight was not insured. I am not positive, of my own personal knowledge, whether the cargo is insured or not. I have not visited the scene of the disaster since it occurred. I have had no means of doing so. No efforts have been made, to my knowledge, to raise or recover either the vessel or cargo. I have been following the sea, off and on, ever since I was thirteen years old. I was never in command of a vessel until last November, when I took command of the Ellen Forrester, and have been in command of her from that time till the collision. During that time I made three or four voyages. On the voyage during which the collision occurred we had no pilot on board other than the mate and myself. My mate's name is Solomon Buckminster. I am not a licensed pilot, nor is the mate, to my knowledge. I examined the Fannie to see if there were any marks on her, occasioned by the collision. I examined her on Thursday, the 30th of April. I did see marks on her port bow where she had been struck by something. I saw workmen engaged in repairing her at that place. My examination did not extend beyond her starboard side, and a portion of her port bow. I saw no other marks of collision or injury. I had charts.

Re-direct.

The deck of the Ellen Forrester, at the time of the collision, was about

two and a half to three feet above the water-line, at the bow. The steamer's deck, at the same point, was about eight feet above the water-line. The steamer was a screw propeller and not a side-wheel steamer.

DANIEL ALLEN.

25 Solomon G. Buckminster, on behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

I went on board the schooner Ellen Forrester, in March last, as mate. I have been following the sea ever since I was fifteen years old. I am now thirty-three. I have been in command of six different vessels. I was on board the Ellen Forrester, as mate, on her last voyage; the ship's company consisted of Captain Allen, master, myself as mate, and three seamen. We left the warf of Canton, the Lazaretto furnace, at half past ten in the morning of Tuesday, April the 28th. We proceeded without any occurrence of importance, with a cargo of a hundred tons of pig iron, bound for Providence, Rhode Island, until midnight of that day. At twelve o'clock I was called, and came on deck to relieve the captain, and he went below. The deck was in charge of myself and Jacob Bryant, one of the crew, it being our watch. The first hour I had the wheel myself; that was between twelve and one o'clock, then Bryant took the wheel. I was on the lookout on the lee quarter; the man at the wheel was keeping lookout on the weather quarter. At the time the weather was fair, and the wind was east-northeast, the schooner was going at the rate of seven knots an hour; her course was south by east half-east. There were passing clouds but no fog; we could see the light of Point Lookout, and the steamboat lights in passing were plain to us. When we were abreast of Point Lookout, near two o'clock, we were struck by the steamboat—the Fannie, I suppose. The steamboat struck the bowsprit first, and broke it off, and then she struck the schooner's larboard bow, about half-way between the knight-
26 heads and fore-rigging, and passed by after striking, making no stop. I was standing on the starboard quarter, about thirty feet back from the stem of the schooner. The steamer rendered no assistance, but went on out of sight. When we came in collision the captain and the men that were below came on deck. I went below and took up the scuttle we have aft, that leads down to the run of the vessel. I did that to see if she was making water. We then lit the lantern, and went forward to see what damage had been done. We found that the bowsprit had been broken off at the knight-heads, and our rail and top timbers between the fore-rigging and the knight-heads had been stove in. The captain and I went forward together, supposing at the time that she was not hurt below her water line. The captain then went down in the forecastle. I took the lantern and looked over the weather bow, and I saw a plank, two streaks below the wales, sprung off. I then said to the captain, "She can't stay up two minutes." The weather bow was the port bow on that occasion. I then went aft to see that the boat was cleared, seeing that it was the only chance to escape. We lowered the boat. Our vessel was still going ahead, and was going down on the starboard side. I jumped into the boat and with my knife cut the stern davit fall; the crew jumped in, the captain being the last. When the captain came over the stern, her lee bow was under the water. We shoved from the vessel astern. We were not more than one length of the vessel from the schooner when she went down, and the surf was thrown up from the sinking of the vessel, and came nearly to the boat. We
27 had no time to get the oars out before the vessel went down. We got our oars out and rowed for Point Lookout light, which was

visible all the time, from the time we left the vessel until we got there. At the time of the collision, I was standing about thirty feet from the bow, on the starboard quarter. I had been in that place from between three to five minutes. I had just come from the forward where I had been on the larbord bow. I was keeping a lookout and walking about. We had not made any change in the course of the schooner from the time I went on watch until the collision. The immediate effect of the collision was a crash, and to heave her off her course two or three points, but I did not see the compass & can't speak positively; it heaved her more to the starboard. The schooner still kept going ahead. I ordered the man at the wheel to heave the wheel hard to port & I suppose it was done; that was calculated to throw the vessel more to the westward; the purpose of that order was to head her to land, towards Point Lookout, in the hope, if she would float, to run her ashore. She went down too quickly to effect anything. We had a blue light on the starboard fore-rigging, at least ten feet above the rail, and in the larboard fore-rigging a red light, the same distance from the rail.

Question. How long before the collision had you particularly noticed the lights of the schooner?

Answer. Three minutes.

Question. What was the condition of the lights when you so noticed them; and what was their condition afterwards?

Answer. The lights were burning; after the collision the port light was carried away; the other light—that is, the starboard light—
28 was burning when the schooner went down. (I first said starboard light when I meant the port light; a man sitting here is apt to mistake the one side for the other.)

Question. After the collision what was done by the steamship, or those on board of her, to repair the injury done you, or to render you assistance, if anything was done?

Answer. The steamship did nothing.

Question. Do you know whether she did anything before the collision to prevent it?

Answer. I do not.

Question. What was the condition or rate of the schooner at the time of the collision?

Answer. The condition of the schooner was good; by good, I mean she was well built, and well rigged in every way; the rate I do not personally know.

Question. Do you know what her value was at the time of the collision?

Answer. She was worth eight thousand dollars.

Cross-examined.

I am not a ship-builder; I am not an expert in any way in the building of ships.

Question. How then are you enabled to say that the schooner is worth eight thousand dollars?

Answer. The captain paid at the rate of seventy-five hundred dollars, and I think there was five hundred dollars' worth of repairs put upon her.

Question. How do you know he paid seventy-five hundred dollars for her?

Answer. He, the captain, told me so; that is all I know about it.
29 Question. How do you know five hundred dollars of repairs were put upon her?

Answer. That was my judgment in the matter; I saw the repairs put upon her.

Question. When and where did you see those repairs put upon her?

Answer. The painting was done here in April, a few days before she sailed for Providence; caulking was done at the same time; that is all I know personally; she was not put upon the ways, but was hauled in alongside the dock.

Question. Do you know what those repairs cost?

Answer. I do not; nor do I know who did them.

Question. How long were they at work on her?

Answer. Two days continuously; we, the crew, were at work with them; there were two men employed to make the repairs.

Question. Do you mean those repairs were worth five hundred dollars?

Answer. I do not.

Question. Do you know what they cost?

Answer. I do not.

Question. Have you a personal knowledge of any other repairs put upon her besides those I have just spoken off?

Answer. I have not; but from my knowledge of the vessel and being familiar with her all the fall, and knowing in what condition she was then in, I saw that her sails and rigging had undergone other repairs.

Question. Would she not have suffered something from the ordinary wear and tear from the time you first knew her up to the time of the collision?

30 Answer. She would.

Question. In your calculation do you make due allowance for the wear and tear that occurred during that time?

Answer. I did not make that calculation nor such allowance.

Question. How long before the steamer struck you had you seen her?

Answer. I did not see the steamer till about the moment of the collision.

Question. Had your attention been called to her by the man at the wheel?

Answer. It had not.

Question. How long had you been personally acquainted with the man then at the wheel of the schooner?

Answer. I had known him one year.

Question. How often and how long at each interval had you sailed with him?

Answer. I had never sailed with him before the 19th of March, 1868, when he shipped on board the schooner at Deer Isle. He was a resident of the same town with me some six years.

Question. Are you, and do you know whether or not, if Bryant was a licensed pilot at the time of the collision?

Answer. I was not a licensed pilot, nor do I know whether Bryant was or not.

Question. Did you examine the steamer Fannie after you got here?

Answer. I did.

Re-direct.

31 Question. Having been, as you said, master of six different vessels and practically familiar with vessels for about eighteen years, have you such knowledge of vessels and their appurtenances as would ena-

ble you to form a reliable judgment as to the value of vessels from an examination of them?

Answer. I think I have.

Question. From your knowledge of the "Ellen Forrester," without regard to her cost or what you have heard about her, what, in your judgment, was her value at the time of the collision?

Answer. I should judge she was worth seventy-five hundred dollars at the time she went down.

Question. Not being a licensed pilot state whether or not you have or have not any knowledge of the rules and regulations for fixing lights and avoiding collisions, as fixed and practiced on coastwise and sea-going vessels?

Answer. I have.

Question. State whether those rules and regulations were neglected or complied with on the "Ellen Forrester" on the night and at the time of the collision.

(Objected to by proctor for respondents as too general in its form, and for other reasons.)

Answer. They were complied with.

Question. Was the seaman Bryant, whom you have said, as far as you know, was not a licensed pilot, a man competent for the discharge of the duties with which he was intrusted and which he was discharging at the time of the collision?

Answer. He was.

32 Re-cross.

Question. Were there any others besides you and Bryant on the deck of the schooner at the time of the collision?

Answer. There were not; we two composed the watch on deck; we were the only witnesses to the collision.

Question. Please state what are the rules and regulations with regard to lights on coastwise and sea-going vessels, with which, in reply to the question put by the libellants' counsel, you have stated yourself familiar?

Answer. The blue light in the starboard fore-rigging must be ten feet above deck, and the red light in port rigging must be the same distance above deck.

Question. Is this all that is required by the said rules and regulations in regard to such lights?

Answer. It is not; it is all in placing them.

Question. What further in reference to the lights and the avoiding of collisions do the regulations require?

Answer. The vessels that I was in, running with the booms on [on] the starboard side, making the light on the larboard bow, should port her helm, and vice versa.

Question. Do I understand you to say that this was done on board the "Ellen Forrester?"

Answer. I was not, because we made no light; that is, we did see any light on board the steamer until she got by, when we saw a dim light up aft.

Question. Have you stated all this required by the rules and regulations in sea-going and coastwise sailing vessels in reference to lights in your above answers?

Answer. That is, all of any importance.

33 Question. Then in reply to the question put to you by the counsel for the libellants as to your knowledge of the rules and regu-

lations for fixing lights and avoiding collisions on coastwise and sea-going vessels, and whether these rules and regulations were complied with on the schooner "Ellen Forrester" on the night in question, am I to understand that your reply "that there must be a blue light on the starboard fore-rigging ten feet above deck and a red light in the port rigging the same distance above deck, and that the schooner had her lights so fixed," constitutes the compliance you have above testified to?

Answer. I do.

Re-direct examination.

Question. State whether you heard, before the collision, any whistle, bell, or other signal or caution from the steamer.

Answer. I did not.

Question. State whether, after you discovered the steamer, anything could have been done by or on board the schooner more than was done to prevent a collision.

Answer. I think not.

Re-cross examination.

Question. Was anything done on board the schooner to avoid the collision?

Answer. Nothing was done.

SOLOMON G. BUCKMINSTER.

Jacob S. Bryant, on behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

34 My name is Jacob S. Bryant. I reside in Castine, Maine. I am thirty years old, and am a seaman and have been so all my life. I design to leave Baltimore by the Boston steamer at three o'clock this afternoon as a passenger. I shipped on the "Ellen Forrester" on the 6th of November last, and was on her from that time until she sunk. We left Baltimore on Tuesday last, the 28th of April, about 11 o'clock. It was the mate's watch on the "Ellen Forrester" at the time of the collision; I was with him; he and I composed the watch. We went on the watch at 12 o'clock, midnight. I had the wheel at twelve o'clock and continued there until the steamer struck us; I should judge the steamer struck us about eight to ten minutes before two o'clock. From twelve to two o'clock the weather was dark and overcast but not foggy, you could see a light three miles; we could see the Point Lookout light plainly. We had our side lights burning; there were two in the fore-rigging; they were green and red; the green light was in the starboard fore-rigging, the red light was in the port rigging ten feet above the rail. These lights were still burning after the collision; the starboard light was still burning when the schooner went down; the steamer took away the port light when she struck us. I did not see any lights on the steamer before or at the time of the collision, nor did I see the steamer before the collision; I saw a light in the aft of the steamer after she passed us; she had no side lights burning at the time. I did not hear any signal, whistle, or bell, and not a word was said between those on board

35 the steamer and those on board the schooner; there was not time. I went forward and looked and found the bowsprit gone, and the vessel split open forward. We then lowered away the boat and got in it; we rowed away from the schooner about four rods. The vessel went down head first. I should judge eight or ten minutes elapsed from the

me the steamer struck us till the schooner went down. We rowed to Point Lookout. We could see the light of Point Lookout all the time we were in the boat until we got there. After the steamer struck out she kept on her course; she did not slack or change her course. From where I was at the wheel I could not see forward; I could see to amidships; it was dark. There were no obstructions to prevent my seeing forward; it was owing to the darkness that I could not see. A man at the wheel is not expected to keep a lookout, he can't be in two places at the same time. A man at the wheel is not expected to be forward on the lookout on any schooner I have ever been on. From where I was I could have seen lights had they been coming towards us. I could see the Point Lookout light. I and the crew saved what we had on, and what we could grab up that was laying around loose. I lost a hundred dollars of clothing and tools I had on board the vessel. I don't know the value of the things the other men lost. I have been in command of four different vessels. I am an able seaman, and am familiar with the duties of a man at the wheel.

Cross-examination.

36 The mate's and my watch commenced at twelve o'clock. We came on deck together. The mate first took the wheel and had it about five minutes. The watch commenced at 12 o'clock. I took the wheel first; I took it from the mate. When I first came on deck I found Mr. Buckmaster at the wheel. One of the Allens had the wheel at the close of the last watch. Before the twelve o'clock I took the wheel from the mate Buckmaster. I took the first trick at the wheel. A trick is sometimes one hour and sometimes two. I kept the wheel until she sunk. The mate only had the wheel a few minutes. I had no conversation with the mate from the time I took the wheel until the time of the collision. Not a word passed, nor was there any change in the course of the vessel. The mate was on the lookout, walking the quarter-deck to the leeward, on the starboard side, about thirty feet from me, I should think. I could see the mate. I put a lantern over the bow and saw that planks were split off from the stem four or five inches. The lower wale plank was started on the port bow. The steamer struck us right straight forward, as near as I can judge, head and head on, like two negroes butting. Our schooner was a sharp vessel and a smart sailer. I am going to Boston this evening on my way home. I am a seafaring man, but have no vessel or voyage now in view.

JACOB S. BRYANT.

37 Wallace Allen, being duly sworn, deposes and says that he was a seaman employed on board the schooner Ellen Forrester on the night of the collision with the steamer Fannie; that he lost certain articles of clothing which he values at the sum of thirty dollars. The clothing consisted of an overcoat, oil suit, hat, mattrass, two pair of boots, one pair of pants, &c.

WALLACE ALLEN.

John S. Allen, being duly sworn, deposes and says that he was a seaman employed on board the schooner Ellen Forrester on the night of the collision with the Fannie; that he lost certain articles of clothing which he values at the sum of thirty-five dollars. The clothing consisted of a suit of oiled clothes, two pair of boots, four pair of stockings, a mattras, & two pair of pants, four shirts, and one hat.

JOHN S. ALLEN.

Deposition of witnesses on the part of the respondent, taken before the same commissioner at the same place on the 13th May, 1868.

John Henry Williams, on the part of the respondents, makes oath, deposeth, and saith as follows, to wit:

My name is John Henry Williams. I am about to proceed on a voyage to Savannah, Georgia, outside of the district of Maryland, and a greater distance than one hundred miles from the place of trial before the said trial. I am a mariner. I am at present attached to the steamer Fannie, and have been so for the last two months as a sailor before the mast. I have been following the sea for four years. I was on board the steamer Fannie on her voyage, immediately proceeding the
38 one just ended, from Savannah to Baltimore. We left Savannah about 8 o'clock in the morning, 25th day of April.

Question. State what occurred upon that voyage.

Answer. On the night of the 28th of April we were steering our course up the bay north by west, and we made a vessel's light ahead one point on our port bow.

Question. What distance was she off?

Answer. I suppose she was about four or five miles distant. She got pretty close to us. The mate gave us orders to port our wheel. She was luffing across our bow. The mate gave me orders to starboard our wheel.

Question. What course was the schooner steering when the mate gave you orders to port your wheel?

Answer. She should be steering south by east, and we were steering north by west. I can't tell exactly what course she was steering.

Question. What was the effect of porting your wheel?

Answer. To leave her to the westward, and carry us to the eastward of her.

Question. Was she, at that time, at the westward of you when the mate told you to port your wheel, and was there room enough for you to have passed each other had you kept your respective courses?

Answer. There was room enough, and she was at that time to the westward of us.

Question. Was it after or before the mate's order to port your wheel that the schooner luffed across your bow?

Answer. The mate's order was before she luffed.

Question. After luffing across your bow, did the schooner seem
39 to change her course; and, if so, in what direction?

Answer. Yes, sir; she ported her wheel to cross our bow to the westward.

Question. Was it after or before she ported her wheel to cross your bow to the westward that the mate gave you the order above referred to, to starboard your wheel?

Answer. It was before the mate gave me the order.

Question. Had the schooner never been luffed or changed her course, as above referred to, would there, in your opinion, have been ample room for the vessels to have passed each other in safety?

(Objected to.)

Answer. Yes, sir.

Question. Did they pass each other in safety? and, if not, state what occurred otherwise.

Answer. They did not pass each other in safety. The last time she kept off across our bows the mate gave me orders to port our wheel and to let her (the schooner) go to the westward; by that time they

were in a line of each other; the schooner struck us on the port bow a glancing blow.

Question. Did anything else occur?

Answer. Nothing else to my knowledge occurred.

Question. Was there much of a shock or concussion occasioned by the collision?

Answer. There was not.

Question. Was it sufficient to lead you to suppose, or did you know, that the schooner was injured?

Answer. I did not know that the schooner was injured.

Question. In what part of the bay did this collision occur?

40 Answer. Between six or eight miles to the eastward of Point Lookout.

Question. What sort of a night was it?

Answer. It was cloudy and no moon; it was dark, but not foggy.

Question. Had you any difficulty in descrying the lights of vessels, &c., &c.?

Answer. No, sir.

Question. How long a time intervened between your first seeing the schooner lights and the collision, if you have any recollection upon the subject at all?

Answer. I suppose it was some fifteen or twenty minutes.

Question. Were the lights of the steamer exhibited; if so, what, how, and where?

Answer. The lights of the steamer were exhibited. The green light was upon the starboard side, the red light on the port side, and the white light was at the masthead.

Question. Who had the watch on deck at the time of the collision?

Answer. The mate, Mr. Billups, had charge of the deck; I was at the wheel; Mr. Shorter, now present, was on the forward deck, on the look-out.

Question. At what hour did the watch alluded to commence?

Answer. About 12 o'clock at night.

Question. What was the condition of the steamer's lights during all that time from the commencement of your watch to the instant of collision?

Answer. They were burning, as usual.

Question. Do you remember or not whether the approach of the schooner was reported to the captain by the lookout, Mr. Shorter?

41 Answer. I do not remember.

Question. Was it reported to the mate?

Answer. It was reported to the mate, the officer in charge.

Question. Was there any effort made on the part of the steamer to avoid a collision?

Answer. There was.

Question. Judging from your experience as a sailor, by whose fault did that collision appear?

(Objected to.)

Answer. It was the schooner's fault.

Question. Had the schooner have held the course she was on before luffing, would there, in your opinion as a sailor, been any collision?

(Objected to.)

Answer. There would not.

Question. What do you understand by the quarter-deck of a schooner?

Answer. The quarter-deck is the deck after the mainmast.

Question. What do you understand by the lee-quarter of a schooner?

Answer. The lee quarter of a schooner is the lee side of her quarter-deck.

Cross-examined.

Question. Where do you live?

Answer. I live in Lee st., Baltimore, No. 6.

Question. When do you expect to sail on your next voyage, and how long will you be absent?

Answer. I expect to sail on the 15' of May. I will be absent from 10 to 12 days.

Question. In what direction was the wind at the time of [of] the collision?

42 Answer. It was about east-northeast.

Question. Did luffing turn the course of the schooner to the eastward or westward of the course she was pursuing?

Answer. It turned it to the eastward.

Question. About how far were you from the schooner at the time when you were first ordered to port the wheel?

Answer. I suppose we were a mile, as near as I can come at it.

Question. How far had you continued this course after porting your wheel before you received your next order changing your course?

Answer. I don't suppose we ran fifty yards before the next order was given to starboard.

Question. Was any order given after that before the collision, which changed your course again?

Answer. The order was given to port.

Question. How far had you run after the order to starboard your wheel before the last order to port your wheel?

Answer. We had not run twenty yards.

Question. How far had you run after the last order before the collision?

Answer. By the time we got our wheel hard aport we were together.

Question. How many and who were at the wheel on the steamship at the time of the occurrence?

Answer. The mate and myself.

Question. Was your course changed to eastward or to westward by starboarding, and in what direction by porting?

Answer. Our course was changed to the westward by starboarding, and to eastward by porting.

43 Question. From the time you first saw this schooner until the collision, was the bell struck or the whistle blown on the steamship, to warn the schooner of your approach?

Answer. It was not.

Question. On what part of your steamer is your wheel situated?

Answer. Foreward of the foremast.

Question. How long a time before the collision occurred had you particularly looked at or examined the condition of the green and red lights of the steamer?

Answer. About a half hour.

Question. Were they both burning clearly a half hour before the collision occurred?

Answer. They were.

Question. Could you see them when at your place at the wheel?

Answer. No, sir; I had only been at the wheel a half an hour.

Question. On which mast was the white light of the steamer?

Answer. On the foremast.

Question. Had you any sails up at the time of the collision?

Answer. The three lower sails were up—the mainsail, foresail, and jib.

Question. After the collision, what was done by the steamer?

Answer. She was slowed down under half steam for about ten to fifteen minutes.

Question. Did you see the lights of the schooner after the collision?

Answer. I did not.

Question. Did any part of her rigging or tackle continue attached and adhering to the steamer; and, if so, what?

44 Answer. I did not see any part of the schooner's rigging attached to the steamer.

Question. At the time of the collision, could you see Point Lookout light?

Answer. I could if I had looked; it was shining brightly enough.

Question. State wherein the Ellen Forrester was in fault in the matter of the collision.

Answer. We ported our wheel and gave her a chance to go to the westward, on the port side of us, which showing her our port light, and we seeing her port light, and no other, that was giving her plenty of room to pass us if she had kept on her course, and had not have luffed across our bows. After she luffed across our bows, I had orders to starboard our wheel, to let him go to the eastward; at the time we got our wheel starboarded, he kept off to the westward, and crossed our bow again to the westward, and we then got our wheel hard aport to clear him, and by that time he was into us. And if that was not his fault, I don't know whose it was.

Question. How many times then do you say that this schooner changed its course as you were approaching?

Answer. She changed her course twice.

Question. About how many knots were you running at that time?

Answer. I suppose between eight and nine.

Question. About what wind was blowing for a vessel bound down the bay?

Answer. I suppose about seven knots.

45 Question. How soon after an order to port or starboard your wheel, is the direction of the course of your steamer changed?

Answer. Three spokes of the wheel will change her course one way or the other.

Re-direct.

Question. How far off could the lights of the steamer Fannie been seen, in a night such as the one in question, by a proper lookout on the schooner?

Answer. I suppose a mast-head light could have been seen four or five miles.

Question. What time are the lights on board your schooner lit, and how long will they burn with their customary supply of oil, or without a renewal?

Answer. They are lit at half past six o'clock; they will burn with their customary supply of oil from ten to twelve hours. I never saw one go out in my life, during the night, after being trimmed.

Question. Are you positive and sure that the course of the schooner was changed as above described by you?

(Excepted to.)

Answer. I am sure.

Question. Was she, just previous to her luffing, to the eastward or westward of the steamer's then course up the bay?

Answer. She was a point to the westward of the steamer's bow when we first saw her.

Question. Was that relative position changed before she luffed?

Answer. We changed our course first, so as to clear the schooner, and to leave her to the westward. After changing our course, she luffed across our bow to the eastward.

46 Question. Are you positive and sure as to this?

(Excepted to and withdrawn.)

Question. Are you familiar with the duties of a wheelsman?

Answer. I have been at it twenty-one years, ever since I was eight years old. In saying in the commencement of my testimony that I had been going to sea four years, I meant I had made sea voyages during that time, but I have been navigating the bay and sea together for twenty-one years, and am familiar with the management of steamboats. I have been wheelsman on the Fannie and various other steamers of the Norfolk, Savannah & Wilmington, and Susquehanna & Port Deposit lines, for five years.

Re-cross.

About how wide is that part of the bay on which your steamer could sail where the collision occurred?

Answer. I don't know how wide the navigable channel is at that point.

Question. About how far did the schooner sail, after luffing, before she again changed her course?

Answer. She did not sail very far from the time that she luffed and fell off from the wind again; as soon as she luffed she kept right off again.

Question. About how far did she sail after her last change of course before the collision?

Answer. I don't think she sailed over ten yards.

Question. In what you have said of the distance and movements of the schooner, have you spoken from your own actual observation—seeing the schooner from your place at the wheel, or have you spoken from what was said by the mate or the steamer's lookout?

47 Answer. What I have said of the movements of the vessel, and all about, was from my own actual observation. I saw every movement of the vessel and the steamer while I was at the wheel.

Question. Please explain what you mean by a wheelsman.

Answer. I understand by a wheelsman a man that can steer his trick at the wheel of a steamer, as it ought to be by the compass, either in the bay or at sea. That is what I call a wheelsman.

Question. Is the place at the wheel assigned exclusively to any part of the sailors, or do all the sailors take their turn or at times keep at the wheel?

Answer. On some ships they carry four sailors as wheelsmen; we ask them before we ship them if they can steer, and ask them if they know the compass; if they do not, they wont ship them as wheelsmen.

Question. All the time of the collision, did you pass the Ellen Forrester to the eastward or westward?

Answer. We went eastward of her.

Question. Where were the schooner's lights, as you saw them?

Answer. The lights were in the proper place in the rigging, to the best of my knowledge.

Re-direct.

When you first saw the schooner, were both of her lights visible; if not, which light was visible?

Answer. I could only see her red light then.

Question. What course did this indicate her to be on, to the eastward or the westward?

Answer. To the westward of us.

48 Question. When did the green light first become visible, and how long after you saw the red light?

Answer. When she luffed across our bow the green light became visible.

JOHN HENRY WILLIAMS.

Columbus Shorter, examined on behalf of the respondents, makes oath, deposeth, and saith as follows, to wit:

My name is Columbus Shorter; I am thirty-one years old; and have been a sailor twenty-one years, mostly on board of sailing vessels.

Question. Were you on board of the steamer Fannie, on her voyage from Savannah to Baltimore, during which a collision between her and the Ellen Forrester occurred.

Answer. I was.

Question. When and where did it occur?

Answer. It occurred on the morning of the 29th day of April in the Chesapeake Bay, eight or nine miles to the eastward of Point Lookout.

Question. Where were you, and what where you doing, at the time of that occurrence?

Answer. I was on the lookout, on board the steamer Fannie, forward, in the performance of my duty as lookout.

Question. Whose watch was it at the time on deck?

Answer. It was Mr. Billup's, the mate; John H. Williams was at the wheel; and I was on the lookout.

Question. How long had you been engaged in this duty before the collision?

Answer. About one hour and a half.

49 Question. At what hour did it occur?

Answer. It occured about half past one o'clock.

Question. Was the Ellen Forrester seen from the Fannie before it occurred?

Answer. It was.

Question. How far off, and in what position, as regards the course of the steamer?

Answer. She was about four miles off when we first saw her, and one point on our port bow to the westward of us.

Question. Who first saw her?

Answer. I saw her, and reported her to the mate, and the mate replied that he already had seen her.

Question. Which of the schooner's lights were first visible to you?

Answer. The red one was first visible.

Question. Could you judge of the course she was then steering?

Answer. Only in so far that she seemed to be steering the usual course down the bay.

Question. Did you observe any change in the course of either vessel?

Answer. I saw the schooner luff as if she was going to the eastward.

Question. Had you then noticed any change in the course of the steam-

er, or heard any order of the mate directing a change of course; if so, what was it?

Answer. Not to my knowledge.

Question. How long after you first saw her did the schooner seem to luff across your bow, or at what distance was she then from you?

Answer. She was about a mile off when she first luffed; I don't know how long it was.

50 Question. Did you hear any order, or notice a change of course on the part of the steamer, after the luffing of the schooner?

Answer. There was none, to my knowledge, until the schooner kept off.

Question. Was there any then? and, if so, state what it was.

Answer. I heard the mate say, "Port your wheel," and saw him and Williams do it with my own eyes.

Question. Do you remember no change in the course of the steamer before that time?

Answer. Not to my knowledge.

Question. How close was the steamer to you when you ported your wheel?

Answer. She was from twenty to forty yards; both were going pretty fast, and I can't calculate the distance.

Question. (How soon afterwards) (was there a subsequent collision?)

Answer. There was, about two minutes.

Question. What occasioned the collision, in your opinion as a seaman?

Answer. The men that had the schooner in charge.

Question. Why do you say it was occasioned by those who had the schooner in charge?

Answer. Because he luffed across our bow.

Question. Had he not have luffed, from the apparent courses of the two vessels, would they have passed each other in safety?

Answer. They would.

Question. Upon which side?

Answer. With the schooner to the westward, and on our port side.

51 Question. Did you hear any orders given on board the schooner?

Answer. I did not.

Question. Had the steamer the customary and proper lights, and——

(Question withdrawn.)

Question. Had the steamer any lights; and, if so, what were they, where were they placed, and in what condition were they?

Answer. She had lights; the green light was on our starboard side, the red light was on our port, the white light was at the masthead; they were in good condition; all three burning.

Question. When the schooner ported or fell off from the wind, did she shut out either of her lights; if so, which?

Answer. No, sir; not then; when she first kept away, both lights were all in sight; her green light, just about the time of the collision, was shut out by means of her jib.

Question. How did you strike one another?

Answer. The two port bows struck one another with a glancing blow.

Question. Was there a severe shock, and had you reason to suppose that the schooner was injured?

(Objected to.)

Answer. There was not a very severe one; I had no reason to think the schooner was seriously injured.

Question. Did you notice any one on the deck of the schooner as you passed her; if so, how many?

Answer. I did not see any one at all.

Question. How close were you to the bow of the steamer when the collision occured?

Answer. I was about 15 feet from the bow.

Question. Had you a view of the schooner's deck?

52 Answer. I could have seen it if I had looked down, but I did not observe it closely.

Question. What sort of a night was it?

Answer. It was a little cloudy and dark, but no fog.

Cross-examined.

Question. Where do you live?

Answer. I live No. 3 Hughes st., Baltimore.

Question. Are you attached to the Fannie, and running on her trips to and from Savannah?

Answer. I left her on the evening of the 29th.

Question. How are you employed?

I am now employed on the steamer North Point, another steamer of the same line.

Question. When do you expect to leave on her, and how long to be absent?

Answer. I expect to leave next Saturday week, the 23rd of May, to be gone from ten to twelve days.

Question. What was the course and force of the wind at the time of the collision?

Answer. The wind was about east-northeast, to the best of my knowledge; it was a six or seven knot breeze.

Question. Where was the mate at the time of the collision?

Answer. In the pilot-house.

Question. How far was the pilot-house from the stem of the steamer?

Answer. I should suppose from twenty to twenty-four feet.

Question. Where were you at the moment of the collision?

Answer. I was forward of the pilot-house; I was not more than five feet forward of the pilot-house.

53 Question. How high above the water are the lights placed on that steamer?

Answer. Eighteen or twenty feet above the water.

Question. How far off that night could you see the hull of a vessel?

Answer. I don't know exactly; I could not have seen a hull more than two or three hundred yards.

Question. Did you speak of the schooner's changing her course from what you saw of the schooner herself, or only from what you saw of her lights?

Answer. I saw her sails when she was luffing, and her starboard light showed me how she was going then.

Question. Did she luff by change of the helm only, or was there a change in the position of her sails?

Answer. I saw no change in the sails; there must have been a change of the helm.

Question. About how far off was the schooner when you saw her luff?

Answer. Not over a mile; I can't tell exactly.

Question. How far did she sail, after luffing, before she lay off on the other tack?

Answer. Not very far; about fifty yards.

Question. About how far after her last change of course did she sail before the collision?

Answer. From forty to sixty yards.

Question. After the collision, did you make any effort to see the schooner's lights, or what became of the schooner?

Answer. I did not myself.

54 Question. Was the whistle blown or the bell rung before the collision to warn the schooner of your approach?

Answer. It was not.

Question. State all that was done on board the steamer to prevent a collision after you came in sight of the schooner.

I can't state all that was done, as I don't know what was done in the pilot-house; I know that the mate ported his wheel the last time to prevent a collision; that is all that I know.

Question. How long before the collision had you examined the lights of the steamer?

Answer. Not over five minutes.

Question. What was their condition when you so examined them?

Answer. They were in a very good condition, all three burning brightly.

COLUMBUS SHORTER.

Michael Lyons, on behalf of respondents, makes oath, deposeth, and saith as follows, to wit:

My name Michael Lyons; I live in Savannah; I was on board the Fannie on her voyage from Savannah to Baltimore when the collision with the Ellen Forrester occurred; I was in the cabin, and in my birth, and awake at the time; I heard the vessel rubbing against something, I first thought she might be rubbing on a rough bottom and going ashore; I got up to see what it was and met the purser standing in the saloon door; I asked him what it was. He said it was a vessel that had just gone by, and that she had rubbed alongside of us. I stood
55 there for a little while; I can't say I saw the vessel, but I saw an object; I did not see anything serious, the steamer was going on her course, and thinking there was nothing the matter, I went back; there was no jar by the collision; it was as if the vessel was grating over a rough bottom; I heard no cry or noise of alarm from the schooner.

M. LYON.

Wallace Thompson, on behalf of the respondents, makes oath, deposeth, and saith as follows, to wit:

My name is Wallace Thompson; I was the engineer of the steamer Fannie, and on board of her at the time of the collision; I was in the engine-room, and heard a slight crash and heard the bell ring to slow down the engine, which was done.

Question. What else was done; was the vessel stopped?

Answer. The vessel was slowed down to half speed.

Question. Did she resume speed or stop?

Answer. She resumed her speed in about a monent.

Question. From the force and nature of the crash you heard, had you reason to believe the schooner was damaged?

(Excepted to.)

Answer. I should have supposed the injurywas very slight; I felt no shock. It decreased the speed of the engine and retarded somewhat the headway of the steamer. I heard no orders and saw nothing further connected with the collision.

Cross-examined.

Question. Where do you live, and how are you employed?

56 Answer. I live at No. 55 Warren st., Baltimore, and am employed as chief engineer of the steamer Fannie.

Question. When do you expect to leave Baltimore and how long do you intend to be gone?

Answer. I expect to leave to-morrow, the 14th of May, and intend to be gone 10 to 12 days.

Question. At the instant of the collision, were you asleep or awake?

Answer. I was awake.

Question. Before the collision had you received any orders to reverse or slow the engine.

Answer. I had not.

Question. From the working of the engine can you tell at about what rate the steamer was running at the time of the collision?

Answer. I can; it was running at about the rate of nine knots an hour.

W. THOMPSON.

Decree.

In the district court of the United States for the district of Maryland, in admiralty.

DANIEL ALLEN & OTHERS, OWNERS OF SCHOONER Ellen E. Forrester.

The above cause standing ready for a hearing, & having been fully argued by the proctors of the respective parties, & the same having been fully & duly considered, it is this 19th day of June, 1868, adjudged, ordered, & decreed that the libellants recover of the respondents & the stipulators in this cause the sum of ten thousand three hundred

57 & sixty-five dollars; that is to say:

The said libellants, owners of said schooner, the sum of six thousand dollars	$6,000
As for a total loss of said schooner.	
The said libellants, owners of the cargo of said schooner, the sum of thirty-eight hundred & fifty doll's	3,850
The libellant Daniel Allen, three hundred & fifty dollars	350
The libellant Jacob S. Bryant, one hundred dollars	100
The libellant Jno. S. Allen, thirty-five dollars	35
& the libellant Wallace Allen, thirty dollars	30

It is also decreed that the said sum of ten thousand three hundred & sixty-five dollars be paid by said respondents or stipulators on or before the 9th day of July next, or execution be issued against them. It is also decreed that respondents pay the costs.

WILLIAM F. GILES.

From which said decree so as aforesaid passed, the said claimants of said steamer Fannie by their proctor aforesaid, in open court here, has prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore, on the first Monday of November next, and to them it is granted.

Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same is transmitted accordingly.

58 *Appeal bond.*

Know all men by these presents that we, David W. Gray and George Small, of Baltimore City, in the State of Maryland, are held and firmly bound unto Daniel Allen, Martin V. Warren, Rebecca S. Warren, John Robbins, Stephen Thurston, estate of Moses Stimpson, Hardy Lane, Samuel Small, John P. Johnson, D. Kimball, Rebecca Shaw, William Dill, J. A. Hopkins, Solomon G. Buckminster, Jacob S. Bryant, Wallace Allen, John S. Allen, J. H. Stickney, J. L. Reed, and T. J. Case, in the sum of three hundred dollars, to be paid to the aforesaid Daniel Allen and others, their executors, administrators, or assigns, to the which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, dated this 31st day of October, in the year eighteen hundred and sixty-eight.

Whereas, at a district court of the United States in and for the Maryland district, begun and held at Baltimore City, on the first Tuesday of June, A. D. 1868, to wit, on the nineteenth day of the said month, the aforesaid Daniel Allen and others, by the decree of the said court, recovered against the owners of the steamship "Fannie" and the stipulators, Washington Booth and Jacob Brandt, jr., the sum of ten thousand three hundred and sixty-five dollars, and the costs of said suit:

And whereas the said owners and the said stipulators, Washington Booth and Jacob Brandt, jr., have appealed from the said district to the circuit court of the United States:

59 Now the condition of the above obligation is such, that if the above bound owners and stipulators of the said steamship Fannie shall prosecute with effect the said appeal, and also satisfy and pay to the aforesaid Daniel Allen and others, their executors, administrators, and assigns, in case the said decree shall be affirmed, as well all damages and costs decreed by the court aforesaid by reason of this appeal as also all costs, charges, and damages as shall be awarded by the said circuit court of the United States, then this bond to be and remain in full force and virtue; otherwise to be of no effect.

DAVID W. GRAY. [SEAL.]
GEO. SMALL. [SEAL.]

Signed, sealed, and delivered in the presence of—
G. O. S. LONGCOPE.
GERARD T. HOPKINS.

Endorsed: "Bond approved Nov. 2nd, 1868.
"WILLIAM F. GILES."

In testimony that the foregoing is a true copy taken from the record and proceedings of the district court aforesaid, I have hereunto subscribed my name and affixed the seal of the said district court this 2nd day of November, in the year of our Lord one thousand eight hundred and sixty-eight.

{ SEALS } { PLACE. }

JAMES W. CHEW,
Clerk District Court.

60 Afterwards, to wit, on the eighth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, the appellants, by their said proctor, filed in court here the following depositions, to wit:

Deposition of John J. Johnson, on the part of appellants, taken before Isaac Brooks, jun., U. S. Commissioner for the Maryland district, on the 29th June, 1868, at his office in the city of Baltimore.

John J. Johnson, being by me first carefully examined and cautioned, and duly sworn according to law, to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. What is your name, residence, and occupation?

Answer. My name is John J. Johnson; I reside No. 153 Hughes st., Baltimore. I am a mariner; I am, and for the last nine months have been, master of the steamer Fannie.

2nd interrogatory. Were you in command of the Fannie on the night of the 28th of April last?

Answer. I was.

3rd interrogatory. State what occurred on that night.

Answer. I was on deck, up to twelve o'clock, of the steamer Fannie, bound on a voyage from Savannah to Baltimore, in the Chesapeake Bay. I retired to my room between twelve and one o'clock; the night was dark and foggy; the lights could be seen from five to eight miles. I left John R. Billups, mate, in charge of the deck. Between one and two o'clock I was awakened by a noise, an unusual noise, in the pilot-house, which adjoins my room. The first thing I remember hearing, after awakening, I heard the mate say, "Starboard!" In a very
61 short time afterwards I heard him say, "Port!" As soon as I heard this I jumped up and ran into the pilot-house. After getting in the pilot-house I saw two lights ahead, very close to our bow, straight ahead. I immediately caught hold of the wheel to see if it was hard aport, and found it to be hard aport. I then halloed to the person in charge of the schooner to hard aport. I then went to the gong, or bell-puller of the bell, which was in the pilot-house, near me, intending to stop the ship, and had not time to do so before she struck.

4th interrogatory. How long after you took hold of the wheel, to see that it was hard aport, before the vessels collided?

Answer. A few seconds.

5th interrogatory. How and where did the vessels strike each other, and what sort of blow was it, whether full on or glancing?

Answer. They struck a glancing blow on each port bow.

6th interrogatory. Were the lights displayed on board the steamer Fannie at and before the time of the collision; if yea, what was their position, and what was their condition?

Answer. The lights were burning brightly when I turned in; I don't remember whether I noticed them or not when I came on deck. [Had they not have been burning when I came on deck, I would have been likely to have noticed them.]

(The proctor for the appellants excepts to the last clause of the answer.)

At the time I turned in we had a white light burning at the
62 formast's head, about fifty feet from the deck; we had a red light on the port side, and a green light on the starboard; they were all burning brightly.

7th interrogatory. How many men did you leave in charge of the steamer's deck when you turned in?

Answer. I left the mate in charge, and two other men in his watch, a lookout and wheelsman.

8th interrogatory. State how long you have known Mr. Billups.

Answer. I think about five years.

9th interrogatory. What is his character and capacity as an officer? (Question excepted to.)

Answer. It is good.

10th interrogatory. What was the condition of the Fannie when she left Savannah as to men and equipments?

Answer. She was properly manned and properly equipped in every way.

11th interrogatory. What course was the Fannie steering when you turned in?

Answer. I was steering north for Smith's Point light-ship, which is a turning point in the bay; we had not reached the light-ship when I turned in.

12th interrogatory. Do you know the character of the eastern side of the bay, from Smith's Point light-ship, up to the head of Smith's Island, (Fog's Point?) if so, describe it.

Answer. I do. There is a large shoal making out on the west side of Smith's Island, on the eastern side of the bay; the shoal makes out a long distance to the westward of Smith's Island; the edge of the shoal is steep. The shoal extends a long way above Fog's Point.

63 (The proctor for the appellants here presented a chart of the Chesapeake and Delaware Bays, compiled and published by Fielding Lucas, jr., as corrected in 1862, which, or any one of the same sort, it is agreed may be used in evidence at the trial for all purposes for which this chart is properly admissible.)

13th interrogatory. Look at this chart, and state the width of the channel from shoal to shoal, between Fog's Point and Point Lookout.

Answer. Not quite six statute miles, and a little over five geographical miles, as appears by measurement with the plyers on the chart.

14th interrogatory. State as nearly as you can, from recollection and your observation at the time of the collision, in what part of said channel the said collision occurred.

Answer. The collision occurred about five or six miles to the eastward of Point Lookout, nearly on a line between Fog's Point and Point Lookout, about two miles and a half from the shoals, on the eastern side of the channel.

Cross-examined.

1st cross-interrogatory. Have you any knowledge of the shoals of which you have spoken, save what you derive from the chart?

Answer. I have; having sounded around and on them many a times.

2nd cross-interrogatory. How much water did your steamer draw at the time of the collision?

Answer. I think about twelve feet; that is, as near as I can come at it.

64 3rd interrogatory. Do the figures on the chart, to which you have been referring, indicate the depth of water in feet or fathoms?

Answer. In fathoms.

4th cross-interrogatory. State if you know what was the unusual noise in the pilot-house which awoke you before this collision.

Answer. I don't know what it was.

5th cross-interrogatory. How much time, as near as you can calculate, elapsed between Mr. Billups' order to starboard and his order to port his helm?

Answer. I do not know exactly, but I suppose about thirty seconds. It is hard for me to judge as I had just woke up.

6th cross-interrogatory. How long time between the order to port and the collision?

Answer. A very short time; a few seconds, I think; less than between the order to starboard and to port.

7th cross-interrogatory. Where was the mate when you went to the pilot-house?

Answer. He was in the pilot-house together with John Williams, the wheelsman.

8th cross-interrogatory. How near together were these two men.

Answer. Mr. Billups had hold of the wheel, on the port side, and John Williams had hold of it on the starboard side; they were the diameter of the wheel apart; they were some three or four feet apart.

9th cross-interrogatory. Did you hear any hail between your steamer and the schooner beside your own call to the schooner to hard aport her helm?

Answer. I did not.

65 10th cross-interrogatory. How far from your position at the wheel, when you took hold of it, was the gong or bell-pull for signalling the engineer?

Answer. About two to two and a half feet.

11th cross-interrogatory. About what is the size of your pilot-house inside?

Answer. I think it is about eight by ten feet.

12th cross-interrogatory. Is it customary with Mr. Billups, in standing at the wheel with the wheelsman, about three feet from him, to give his orders to starboard or port his wheel in so loud a voice as to wake you in your house?

(Question excepted to.)

Answer. I suppose it would be in time of danger; he would be more apt to speak loud in time of danger.

13th cross-interrogatory. Of how many men did the ship's company of the Fannie consist on that voyage?

Answer. Seventeen men and the stewardess.

14th cross-interrogatory. At the time of the collision, were you nearest to Point Lookout light or to Fog's Point light?

Answer. I was on the eastern side of the channel; I think I was nearest to Fog's Point light.

15th cross-interrogatory. Did you before or after the collision stop your steamer, or signal the engineer at all to change your speed?

Answer. I rang one bell to slow her down at the time of the collision, or just after, I am not positive now which.

16th cross-interrogatory. How long before you again put her under full headway?

66 Answer. I cannot tell exactly. I suppose—(the proctor for the appellants interposed and said, "No guessing; state what you know.") After slowing her down the two vessels had then past each other. I went out on deck to ascertain what damage was done. I found it was very slight. I looked around for the schooner, and did not see her; I then went into the pilot-house, and rang the all-clear bell to go ahead under full speed.

17th cross-interrogatory. By what light did you examine the injuries you received at that time?

Answer. By a deck lamp.

18th cross-interrogatory. Where did you procure that lamp?

Answer. We keep one lighted in the amidship-house, always ready in case we should want it for anything.

19th cross-interrogatory. Do you mean that you got that lamp from the amidship-house and put it over the side, and thus examined the injuries received by your steamship.

Answer. I suppose one of the men got it; I did not get it myself.

20th cross-interrogatory. Where was Mr. Billups while you were making these investigations?

Answer. Mr. Billups was helping me to make the investigation.

21st cross-interrogatory. Did he or did you carry the light of which you have spoken?

Answer. I don't know who carried it. I did not carry it myself.

67 22nd cross-interrogatory. Was it put over the side at all to aid you in examining the effect of the collision?

Answer. It was.

23rd cross-interrogatory. At the point of the collision, about how high above the water was the side of your steamship?

Answer. The deck I suppose is about twelve feet from the water, and the bulwark is about two feet or three feet above the deck. It is not much over two feet.

24th cross-interrogatory. What was the name of your engineer at the time of the collision?

Answer. Wallace Thompson.

25th cross-interrogatory. About how far above the water was the force of the blow of the schooner delivered upon your vessel?

Answer. She was scratched from about two feet above the water nearly up to the deck.

26th cross interrogatory. Was any part of the schooner or her rigging attached or adhering to your steamer when you so examined?

Answer. There was none.

27th cross-interrogatory. Have you seen the schooner or any part of her since; and, if so, where?

Answer. I have seen the mast of a schooner, supposed to be her, to the eastward of Point Lookout.

28th cross-interrogatory. How far distance from Point Lookout is the mast of the sunken schooner which you suppose to be the Ellen Forrester, as near as you can estimate it?

Answer. I think about four miles.

68 29th cross-interrogatory. Is it east or southeast from Point Lookout?

Answer. I think she bears about east-southeast, as near as I can judge.

30th cross-interrogatory. How long after the collision did you reach Baltimore?

Answer. I think it was between eleven and twelve o'clock, the same day, the 29th of April.

31st cross-interrogatory. Did you make any report of the collision; and, if so, to whom?

Answer. I did not report it to the newspapers, but I told the bookkeeper of the keeper. I don't remember whether I told any one else or not. I told him on the day of my arrival.

Direct examination resumed.

15th interrogatory. At the time of the collision, or immediately before, or at any time thereafter, did you hear any hail, warning, or cry of distress from the schooner, or see any signal?

Answer. I did not.

16th interrogatory. Were you aware that the schooner was seriously damaged by the collision, and what was the apparent severity of the same?

(Question excepted to.)

Answer. I did not think that the schooner was seriously damaged; the noise of the collision was very slight, and my own damages were not more than the scratching of the wood and paint; both vessels were going very fast, and they struck a glancing blow.

17th interrogatory. Immediately after the collision did you observe any change of course on the part of the schooner?

69 Answer. I did not see her at all after the collision. I looked for her.

18th interrogatory. How did you then account for her disappearance?

Answer. The night was dark, and her lights could not be seen after she passed; I don't recollect having seen her sails at all; I only saw her lights as she approached after I came on deck.

19th interrogatory. Is there any rule or regulation that you are aware of, requiring masters of steamers to report casual accidents or collisions to the newspapers or Exchange reading-room, on their arrival at this port?

Answer. None that I know of.

Cross-examination resumed.

32nd cross-interrogatory. To what extent were repairs necessary to remove from your steamship the scratches you said she received by the collision?

Answer. There were two carpenters at work a quarter of a day each, I think; the painting I had done by my own crew.

33rd cross-interrogatory. Is it not customary for steamships and other vessels to report to the Exchange reading-rooms, or newspapers, on their arrival in port, all occurrences of interest to those concerned in other vessels?

(Question excepted to.)

Answer. The captain uses his own pleasure about that; he can report as little or as much as he likes about any occurrences he may see upon his passage.

34th cross-interrogatory. Did you not on this occasion report
70 so trivial an occurrence as having seen some other vessel or vessels outward bound?

(Question excepted to.)

Answer. I do not remember my report at present. My purser gave in a report. I do not recollect what the report was.

35th cross-interrogatory. Did he give it in your presence, or by your direction?

Answer. I did not see him give it to any one; he gave it by my direction, I suppose. In passing vessels in going to and from Savannah, I sometimes give the name of a vessel to the purser; sometimes the mate gives it to him; on getting into port he generally hands it to me for my approval; but I do not remember whether he did so in this case or not. The purser's name is George Mitchell.

36th cross-interrogatory. Was the fact of this collision entered on your log-book?

Answer. Mr. Billups can answer that question; he keeps the log-book; I do not.

JOHN J. JOHNSON.

Subscribed and sworn to before me this 29th day of June, 1868.
ISAAC BROOKS, Jr.,
U. S. Commissioner.

Deposition of John R. Billups, on the part of the appellants, before Isaac Brooks, jr., United States commissioner for the Maryland district, at his office, in the city of Baltimore, on the 29th day of June, 1869.

71 John R. Billups, being by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

My name is John R. Billups; I am thirty-two yeers of age, and reside in the city of Baltimore, No. 113 Orleans st. I am a mariner, and I have been following that service for twenty-odd years on steamers and sailing vessels.

1st interrogatory. Are you familiar with the management of steamers and propellers, and have you seen much service upon the same, & how long, and in what character?

Answer. I am familiar with the management of steamers and propellers. I have seen much service upon the same; for the last seven or eight years I have been an officer on such vessels.

2nd interrogatory. Do you know the steamer Fannie; is she a side-wheel or propeller; have you ever served on board of her; and in what capacity?

Answer. I am acquainted with the steamer Fannie; she is a propeller. I have served on board of her as mate.

3rd interrogatory. Were you on board of her the latter part of April last, on a voyage from Savannah to Baltimore, during which a collision occurred between her and the sch'r Ellen Forrester?

Answer. I was.

4th interrogatory. Where and at what time did that collision occur?

Answer. It occurred in the Chesapeake Bay, on the morning of the 29th of April, near two o'clock, from four to five miles east of Point Lookout.

72 5th interrogatory. How long before the collision did you see the Ellen Forrester or her lights; in what direction, and how far off did she then seem to be?

Answer. I judge it was fifteen to twenty minutes before the collision that I saw the Ellen Forrester. The Ellen Forrester was about one point on the port bow of the steamer, and she then seemed to be from three to four miles off.

6th interrogatory. Had you then passed the light-house off Smith's Point, and in which direction were you steering; and what was your course?

Answer. We had passed the light-boat off of Smith's Point, and were steering north by west.

7th interrogatory. When you first saw the schooner, were her sails or hull visible, or did you only see her light or lights?

Answer. The sails and hull were not visible. I first saw her light, her port light; the red light.

8th interrogatory. After first seeing her port light, was there or not any alteration made in the course of your steamer, and how long after you saw such light?

Answer. There was an alteration made in the course of our steamer a few seconds after we saw the light.

9th interrogatory. State what was that alteration.

Answer. I ordered the man at the wheel to port, so as to give the schooner room to pass to the westward of the steamer.

10th interrogatory. After this order, did you observe any change made in the course of the schooner, or in the number or bearing of her lights?

Answer. I saw the schooner going to the eastward, attempting
73 to cross the steamer's bow. She showed her green or starboard light in view. I immediately ordered the man at the Fannie's wheel to starboard his wheel, so as to let the schooner go to the eastward, if she wished. Before the steamer's course was changed any, in heaving the wheel, I saw the schooner had kept off, and was heading directly for the ship. I ordered the man at the Fannie's wheel to hard aport when they came together.

11th interrogatory. What do you mean by saying, "I saw the schooner had kept off."

Answer. By saying the schooner had "kept off," I mean that she tried to get to the westward of the steamer.

12th interrogatory. Where did they strike each other, and what was the character of the blow?

Answer. They struck each other on the port side; the blow seemed to be light; it struck on the port side a glancing lick.

13th interrogatory. What was the position of your helm at the time?

Answer. My helm at the time was hard aport.

14th interrogatory. Did you notice the course taken by the schooner after the collision?

Answer. I saw her just after the collision, apparently on the same course.

15th interrogatory. Did you at the time suppose that she was seriously injured?

(Question excepted to.)

Answer. I did not.

16th interrogatory. How many men were in your watch, and who were they, and where were they stationed?

74 Answer. Two men were in my watch. John Williams was at the wheel at the time, and Columbus Shorter was on the lookout.

17th interrogatory. Had the lookout reported the schooner to you before the collision; and, if so, at what time?

Answer. He had; some fifteen or twenty minutes before two o'clock he asked me if I saw her. I told him that I did; I mean the lights of the schooner. I did not see the schooner; it was the light that was reported to me.

18th interrogatory. When you first saw the red light of the schooner, did that furnish any data by which you could judge of the schooner's course; if yea, state how, and what course the schooner seemed to be steering?

Answer. It did furnish a data by which I could judge of the schooner's course; she seemed to be steering the usual course down the bay, and far enough to the westward off the steamer to have gone all clear of her had she have kept her course.

19th interrogatory. How do you tell, by the lights of an approaching vessel, whether her course is to the eastward or westward of you?

Answer. I can tell by the bearings of her lights.

20th interrogatory. Coming up the Chesapeake Bay, if you saw a vessel ahead of you, coming down the bay, with her red light visible, would

that indicate that her course was to the eastward or westward of you?

Answer. It would indicate that she would pass us to the westward.

21st interrogatory. How if the green light only was visible?

Answer. It would then indicate that she was going to the eastward.

75 22nd interrogatory. How, if both lights were squarely and fairly visible?

Answer. It would indicate that she was coming direct for the vessel.

23rd interrogatory. Was it from these signs that you inferred the course which the Ellen Forrester was sailing?

Answer. It was.

24th interrogatory. At what time did you take the deck and relieve the captain?

Answer. At twelve o'clock.

25th interrogatory. Were there any lights then exhibited from the Fannie? If yea, state what they were, and what was their condition.

Answer. There was a white light at the foremast's head, about fifty feet from the deck; it was in good condition, and burning. That light was visible from three to four miles on the night in question. There was a red light on the port side, in good condition, and a green light on the starboard side, in like order.

26 interrogatory. What was the condition of these lights at the time of the collision?

Answer. The condition of those lights was good at the time of the collision.

27th interrogatory. Had any change or alteration been made in them from the time you first saw them to the time of the collision?

Answer. There was no change or alteration made.

28th interrogatory. To the best of your judgement, at the time,
76 as an officer and expert, did you do everything that should have been done or left undone to avoid this collision?

(Question excepted to.)

Answer. To the best of my judgement at that time I did all in my power to avoid the collision.

29th interrogatory. Did you hear any cry of distress or warning from those on the schooner before, at the time of, or after the collision?

Answer. I did not.

Cross-examined.

1st cross-interrogatory. How much time elapsed between your first order to port your wheel and your order to starboard her?

Answer. Some few minutes elapsed.

2nd cross-interrogatory. How far had you advanced in the interval?

Answer. I can't say; it is hard to come at.

3rd cross-interrogatory. About what rate were you sailing at the time?

Answer. About nine knots.

4th cross-interrogatory. Where were you when you first discovered the schooner?

Answer. I was alongside the wheel; the port side of the pilot-house.

5th cross-interrogatory. Did you leave that position from that time until the collision?

Answer. I did not go out of the pilot-house.

6th cross-interrogatory. At the distance which you supposed the

schooner to be when you first saw her, (three to four miles,) about how many degrees away from you would her course be directed if she
77 was turned sufficiently to the westward to hide her green light?

Answer. I think she would hide her green light if she went off anything like two points.

7th cross-interrogatory. At that distance, if she was one point on your port bow, what distance was she to the westward of the course you were then steering?

Answer. I can't answer that question.

8th cross-interrogatory. A point, as used by you, is what part of a circle?

Answer. One thirty-second part of a circle.

9th cross-interrogatory. Did you do anything, and, if so, what, to notify the schooner of your approach or her danger?

Answer. I did not do anything.

10th cross-interrogatory. Did you slack or diminish the rate of the steamer prior to the collision?

Answer. I did not.

11th cross-interrogatory. Did you at any time hail or call to the schooner?

Answer. I did not.

12th cross-interrogatory. Between the time that you saw the schooner's red light only, and the time that you saw the schooner's green light only, was there any moment of time in which you saw both her lights?

Answer. There was.

13th cross-interrogatory. How long was that after you first saw her red light?

Answer. Some few seconds.

14th cross-interrogatory. Was it before or after you gave the order first to port your wheel?
78 Answer. It was afterwards.

15th cross-interrogatory. How long after that order before you saw her green light only?

Answer. After the first order to port the wheel it must have been some seven to ten minutes before I saw the green light.

16th cross-interrogatory. At that time was the schooner still on your port bow, one point off your course?

Answer. No, sir. When I saw her green light, she was directly ahead, and heading across the [the] steamer's bow to the eastward.

17th cross-interrogatory. At that time about how far was she from you?

Answer. That is hard to answer; she was within some feet of us.

18th cross-interrogatory. Did you then immediately give the order to starboard your helm, and was the order obeyed?

Answer. I did, and the order was obeyed.

19th cross-interrogatory. How far did you then advance before your next order to port your wheel?

Answer. I don't know.

20th cross-interrogatory. Can you tell about how much time it was before you gave your next order to port your wheel?

Answer. It might have been a few seconds.

21st cross-interrogatory. Do you testify that during those few seconds the schooner had changed her course and came around, so that instead of the green light only being visible it had become entirely shut out, and the red light only visible?

Answer. The time it took you to ask and take down this ques-

79 tion, the schooner was under the steamer's port side, and the collision had taken place.

22nd cross-interrogatory. At the time of the order to starboard your helm what light or lights of the schooner were visible?

Answer. Her green light.

23rd cross-interrogatory. From that time to the collision is it that so little time elapsed as was consumed in asking the question?

Answer. I can't tell whether it was so little time as that or not.

24th cross-interrogatory. About what distance, that night, could you see a vessel or any object except a light on the water?

Answer. I suppose you could have seen an object the size of a vessel about eighty feet, perhaps further.

25th cross-interrogatory. After the collision, when you saw the schooner standing on her course, where was Captain Johnson?

Answer. He was somewhere near the pilot-house; I can't say where exactly; he might have been in it.

26th cross-interrogatory. Did the collision check the speed of the steamship?

Answer. Not that I could perceive.

27th cross-interrogatory. Did you know at the time of her being checked?

Answer. I did not.

28th cross-interrogatory. Did you before the colllsion strike the steamer's bell, blow her whistle, or slack her speed, or cause it to be done?

Answer. I did not.

80 Direct examination resumed.

30th interrogatory. Was her speed slacked after the collision; if yea, how soon?

Answer. It was, to the best of my knowledge, just at time of the collision. I subsequently heard the captain give the order to ring the all-clear bell, from which I inferred that she had slacked her speed.

31st interrogatory. Did the captain to your knowledge give any order to slack the speed; and, if so, when; or do you only infer that he did by hearing the all-clear bell ring?

Answer. I did only infer it by hearing the all-clear bell ring. I did not hear the captain give the order to check the speed, and I did not know that her speed had been slackened until I heard the all-clear bell ring.

32nd interrogatory. In reply to the question of the appellees' proctor, "How far from you the schooner was when she headed across your bow to the eastward," you stated, "Some feet." Try to recollect how many feet.

Answer. To the best of my knowledge, from seventy-five to a hundred.

33rd interrogatory. Could you at that time have avoided the collision by slowing your engine?

Answer. No, sir.

(Question and answer excepted to.)

34th interrogatory. Why did you not slow your engine at that time?

Answer. Because I did not think it would do any good; they
81 were so close together that it was impossible to avoid a collision.

JOHN R. BILLUPS.

Subscribed and sworn to before me this 29th day of June, 1868.

ISAAC BROOKS, JR.,
U. S. Commissioner.

And afterwards, to wit, on the 13th day of October, in the year of our Lord one thousand eight hundred and sixty-eight, the following agreement was filed in court here, to wit:

Agreement.

In the circuit court of the United States in and for the fourth circuit, in admiralty, on appeal.

DAN'L ALLEN & OTHERS
vs.
STEAMSHIP FANNIE & OWNERS.

It is agreed in this case that the owners of the Ellen Forrester are correctly set forth in the amended libel filed herein, & that the evidence of Daniel Allen, Jacob S. Bryant, Wallace Allen, and John S. Allen, taken de bene esse before Isaac Brooks, jr., commissioner on the part of the libellants, & of John Henry Williams, Columbus Shorter, Michael Lyons, & Wallace Thompson, examined before said commissioner on the part of the respondents, shall be read in evidence on the hearing of this appeal as if the same had been taken after the appeal, and for the purposes thereof.

HENRY STOCKBRIDGE,
Proctor for Libellants.
AND'W STERETT RIDGELY,
Proctor for Respondents.

82 And afterwards, to wit, on the 10th day of April, in the year of our Lord one thousand eight hundred and sixth-nine, the following depositions taken under a commission issued to Peter Thacher, United States commissioner, Rockland, Maine, were filed in court here, to wit:

I, Peter Thacher, of Rockland, in the county of Knox and State of Maine, a commissioner of the circuit court of the United States in and for the district of Maine, in the first circuit, do hereby certify, in obedience to the foregoing commission to me addressed by the circuit court of the United States for the fourth circuit in and for the Maryland district, that upon the twenty-fifth day of November, A. D. 1868, I took, in due form of law, the oath hereunto annexed, entitled "commissioner's oath," before Albert S. Rice, a justice of the peace in and for said county of Knox, and that I also, upon said day, duly administered to Stephen Thacher, of said Rockland, whom I had appointed clerk for the purposes of this commission, the oath hereto annexed, entitled "clerk's oath."

And I further certify that I caused certain of the witnesses named in the foregoing commission, to wit, David T. Warren, Thomas Warren, and George Tolman, to come before me, at my office in Rockland aforesaid, at the times hereinafter mentioned, to wit, the said David T. Warren on the twenty-fifth day of November, A. D. 1868; the said Thomas Warren on the twenty-sixth day of November, A. D. 1868; and the said George Tolman, on the first day of April, A. D. 1869; and that each of said witnesses before testifying was, upon the day upon which he so came before me as aforesaid, cautioned and duly sworn before me,
83 upon his corporal oath upon the Holy Evangely of Almighty God to testify the whole truth touching his knowledge or remembrance of any that might relate to the cause in said commission named, in answer to the interrogatories and cross-interrogatories hereunto annexed

and to him to be propounded, and that the said witnesses thereupon, upon the days aforenamed respectively, gave their depositions hereunto annexed by them respectively subscribed in answer to the interrogatories and cross-interrogatories aforesaid.

And I further certify that after they were duly cautioned and sworn, as aforesaid, I examined the said witnesses by putting to each of them, in order, the aforesaid interrogatories and cross-interrogatories, and that their several answers thereunto were, in my presence, reduced to writing by Stephen Thacher, my clerk aforesaid.

Given under my hand and seal, at Rockland aforesaid, this seventh day of April, in the year of our Lord eighteen hundred sixty-nine.

[SEAL.] PETER THACHER,
U. S. Commissioner, and Commissioner specially appointed in the above entitled cause.

Fees.

Witnesses, each—		
180 miles travel	9 00	
Attendance	1 50	
Three, each	10 50	
		$31 50
Commissioner		26 50
		$57 50

P. T., *Com'r.*

84 I, David T. Warren, of Deer Isle, in the county of Hancock, and State of Maine, having been duly cautioned and sworn to testify the whole truth relative to the issue, do depose and say in answer to interrogatories as follows, to wit:

1. To the first interrogatory I answer and say: My name is David T. Warren; my age is 41; my residence is Deer Isle, in the county of Hancock, and State of Maine; and my occupation is that of a deputy collector of customs for the district of Castine, in said county and State.

2. To the second interrogatory I answer and say: I did know the schooner Ellen Forrester, whereof Daniel Allen, of said Deer Isle, was master. I know that he was master Dec. 9, 1867. Soon after that date he sailed in her from said port as such master, and, so far as I know or have reason to believe, continued in that capacity during the time mentioned in this interrogatory. I knew said vessel at said Deer Isle, at the Straits of Canso and at the Gulf of St. Lawrence often. I knew said vessel at said Deer Isle in the spring, summer, & fall of 1865. I knew her the same season in the Gulf of St. Lawrence, and was frequently in company with her there that season. I saw her in the Straits of Canso the same season. She was there refitting at the same time that my vessel was there refitting. I knew her in said Deer Isle in the year 1866, and I knew her in said Deer Isle in 1867 up to the time in December of that year that she sailed. I knew her from two and one-half to three years. I never examined said vessel for the purpose of ascertaining her character, quality, and value. I was frequently aboard of her in
85 her hold and in other parts of her. I always regarded her as a good vessel. She was very neatly finished up. In 1866 she had

a new suit of sails put on her. I consider her value to have been $8,000 the last time I saw her, in December, 1867. My occupation previous to 1866 for eighteen years was to command coasting and fishing vessels.

3. To the third interrogatory I answer and say: I do know Daniel Allen and Solomon G. Buckminster. They are both sea-faring men, and have both been to sea since they were boys. They are both well qualified to command such a vessel. They are both skillful and experienced seamen.

1 X. To the first cross-interrogatory I answer and say: That in my answers touching the vessel, I speak from my own personal knowledge, and not from hearsay. In my answer touching said Allen and Buckminster, I speak both from personal knowledge and from their character and reputation.

2 X. To the second cross-interrogatory I answer and say: I have personal knowledge in regard to the character and construction of vessels. My opinion in regard to the said vessel is based upon my personal observation of her.

3 X. To the third cross-interrogatory I answer and say: I do so consider myself. I have been acquainted with Daniel Allen and Solomon Buckminster ever since they were children, with Allen 15 years, with Buckminster longer. They have both been to sea with me. My knowledge of their character and capacity depends upon my personal acquaintance with them and upon their character and reputation in the seaport where they and I reside.

DAVID T. WARREN.

86 I, Thomas Warren, of Deer Isle, in the county of Hancock, and State of Maine, having been duly cautioned and sworn to testify the whole truth relative to the issue, do depose and say in answer to interrogatories as follows, to wit:

1. To the first interrogatory I answer and say: My name is Thomas Warren; my age is 49; my residence is Deer Isle, in the county of Hancock and State of Maine; and my occupation is that of a trader.

2. To the second interrogatory I answer and say: I did know the schooner Ellen Forrester, whereof Daniel Allen, of said Deer Isle, was master in January, February, March, and April, 1868. I knew her in Gloucester, Mass., before she was owned at Deer Isle, but I cannot recall the year. I knew her also at said Deer Isle in the years 1865, 1866, & 1867, up to the time in December of the last-named year, when she sailed from said Deer Isle. I knew her in all four or five years. She was a very superior vessel in all respects. She was thoroughly built and of the best materials. She was very fast as a sailing vessel. Her value was not less than $8,000.

3. To the third interrogatory I answer and say: I am acquainted with Daniel Allen and Solomon G. Buckminster. Their capacity and qualifications for commanding such a vessel are good.

1 X. To the first cross-interrogatory I answer and say: That in so answering as here inquired of, I speak from my own personal knowledge, and not from hearsay.

87 2 X. To the second cross-interrogatory I answer and say: I have personal knowledge in regard to the character and construction of vessels. For the last twenty years I have built, rebuilt, and bought vessel after they were built. I have personally superintended the construction of a number of vessels. I have often critically examined vessels in reference to purchasing them. My business now and for twenty years past has been in part fitting vessels for sea. Before said vessel was owned in

Deer Isle I examined her thoroughly at Glouscester., Mass., in reference to purchasing her. I afterwards for years fitted her for sea, at Deer Isle, and my opinion of her is based upon actual knowledge and observation.

3 X. To the third cross-interrogatory I answer and say: I do consider myself well qualified to judge as to the capacity of a person to command a vessel such as the Ellen Forrester. I do consider myself an expert as to the subject inquired about. I have been acquainted with Daniel Allen for ten years, and with Solomon Buckminster for twenty years. I have never been to sea with either of them. As to my knowledge of their character and capacity to command such a vessel, I answer, that I have lived in the same village with said Daniel Allen for the last ten years, and have employed him to act in different capacities in different vessels which I have owned for the last six years; Buckminster has lived within two miles of me for the last twenty years, and for the last ten years he has acted as master or mate in vessels in which I have been an owner.

THOMAS WARREN.

88 I, George Tolman, of Deer Isle, in the County of Hancock, and State of Maine, having been duly cautioned and sworn to testify the whole truth relative to the issue, do depose and say in answer to interrogatories as follows, to wit:

1. To the first interrogatory I answer and say: My name is George Tolman; my age is 30; my residence is Deer Isle aforesaid; and my occupation is that of a trader.

2. To the second interrogatory I answer and say: I did know the schooner Ellen Forrester, whereof Daniel Allen, of Deer Isle aforesaid, was master in January, February, March and April, 1868. I first knew her at said Deer Isle in May 1866, I having gone there to reside January previous. I was well acquainted with her during the remainder of the year 1866, and also during the year 1867 till December. The firm of which I was & am a partner fitted her twice for fishing voyages in the year 1866, and twice in 1867. In Dec., 1867, I took passage in her from Deer Isle to Belfast, Me. I considered her a strong, staunch, and able vessel, and a first-class fishing vessel. She was well fitted in sails, rigging, anchors, & otherwise. The sails were nearly new. Her cash value was $7,500.

3. To the third interrogatory I answer and say: I am acquainted with Daniel Allen and Solomon G. Buckminster, of said Deer Isle. In my judgment, they were well qualified and capable to command such a vessel. They were men of steady habits and good seamen.

1 X. To the first cross-interrogatory I answer and say: That in
89 answering the second interrogatory in chief, I speak from my own personal knowledge and not from hearsey; in answering the third interrogatory in chief, I would state that not being a sea-faring man, except as to my acquaintance with Allen & Buckminster, and except as my opportunities for personal observation, I speak from their general reputation as shipmasters in the communities where they live.

2. To the second cross-interrogatory I answer and say: I think I have some personal knowledge in regard to the character and construction of vessels. I am part owner of some twelve sail of vessels of her class and larger. The opinion I have formed and stated touching said vessel is based upon personal examination and knowledge of her. I once examined her with a view of purchasing a part of her.

3. To the third cross-interrogatory I answer and say: I do not consider myself an expert as to what constitutes capacity to command such a vessel. I have known said Allen and Buckminster for about three years. Have never been at sea with them, except at the time referred to, when I went on said vessel from Deer Isle to Belfast, when they were both aboard. In addition to what I have already stated, I have transacted much business with them for three years past, and know them to be men of high character for integrity.

GEO. TOLMAN.

In the circuit court of the United States in & for the fourth circuit, in admiralty, appeal.

DANIEL ALLEN & OTHERS
vs.
STEAMSHIP "FANNIE" & OWNERS.

90 Interrogatories to be propounded to Solomon G. Buckminster, a witness to be examined on behalf of libellants.

1. What is your age, residence, & occupation?

2. If you have said you are a seaman, please state how long you have been so, in what vessels you have sailed, & in what capacity.

3. If you were ever employed on the schooner Ellen Forrester, state where you were so employed, & in what capacity, & who else was employed on the same vessel with you.

4. State particularly all that transpired on the Ellen Forrester on the last voyage on which you sailed in her, from the time you began to take in cargo, if you did take in cargo, until you left her or lost sight of her.

5. If you have said that there was a collision of the Ellen Forrester with another vessel, state particularly the place & time, where & when it occurred; the state of the weather at the time; your position, condition, & occupation at the time; the course & rate of sailing of the Ellen Forrester at the moment of the collision, & what it had been for two hours previously; what changes during that time had been made in the course of the Ellen Forrester; what lights she had, if any; what part of the vessel struck against each other; the effect of the collision to the Ellen Forrester; what could have been done more than was done by those on board the Ellen Forrester to prevent the collision after the steamship was discovered; what the steamship did after the collision to aid the Ellen Forrester or those on board of her; what examination you made of the Ellen Forrester after the collision & generally
91 all that transpired till you lost sight of her.

6. What was the size, character, condition, & value of the Ellen Forrester at or immediately before the time of the collision?

7. State whether you lost any property by the collision; and, if so, its value.

8. What was the width of the Chesapeake Bay at the place of the collision?

9. Specify all that was saved from the Ellen Forrester after the collision, so far as you know, & your means of knowing.

10. About how high above the water was the deck of the schooner, & how high the deck of the steamship at the time of the collision?

11. Did the steamer give any signal or hail, either by ringing a bell, blowing a whistle, or in any other manner, before the collision; if so, what was the signal?

12. If you know any other matters or facts material to the issue in this case, please state them fully and particularly.

H. STOCKBRIDGE,
Proctor for Libellant.

Interrogatories to be propounded to Thomas Warren, George Tolman, & David T. Warren, or to so many of them as shall appear before the commissioner.

1. State your name, age, residence, & occupation.

2. Did you know the schooner Ellen Forrester, whereof Daniel Allen, of South Deer Isle, Maine, was master in January, February, March, & April, 1868? If so, state where, when, & how long you knew her,
92 & the character, quality, and value of said vessel; state particularly.

3. Are you acquainted with Daniel Allen & Solomon G. Buckminster? If so, state what is their capacity & qualifications for the command of such a vessel.

H. STOCKBRIDGE,
Proctor for Libellant.

Cross-interrogatories to be propounded to Thomas Warren, George Tolman, and David T. Warren, or such of them as may be examined in chief.

X question 1st. In answering the 2nd and 3rd interrogatories in chief, do you speak from your personal knowledge, or from hearsay?

X-question 2nd. Have you any personal knowledge in regard to the character and construction of vessels; and, if you have formed any opinion in regard to the schooner Ellen Forrester, upon what is that opinion based? State the foundation or ground of such opinion.

X-question 3rd. Do you consider yourself an expert as to what constitutes capacity to command a vessel such as the Ellen Forrester? and, if you are acquainted with Daniel Allen and Solomon Buckminster, state for how long a time; state also whether or not you have ever been to sea with them, and upon what your knowledge of their character and capacity depends.

ANDREW STERETT RIDGELY,
Proctor for Respondents.

93 Cross-interrogatories to be propounded to Solomon G. Buckminster on the part of the respondent.

Question 1st. If, in reply to the 7th interrogatory in chief, you state that you lost any property by the collision, please particularize what that property was, and give the respective articles which composed such property, with the value of each article, so far as you can judge of its value, at the time of the collision.

ANDREW STERETT RIDGELY,
Proctor for Respondent.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

{ SEAL'S } To Peter Thacher, esqr., U. S. commissioner, Rockland,
{ PLACE. } Maine, greeting:

Be it know that you are appointed commissioner to examine evidences in a cause now depending in the circuit court of the United States for

the fourth circuit, in and for the Maryland district, between the owners of the steamship Fannie, appellant, and Daniel Allen & others owners of schooner Ellen, appellee.

Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk, to attend the examination of this commission, that at such time and place as to you shall seem convenient you cause to come before you all such evidences as shall be named or produced to you by either the appellant or appellee, and that you
94 examine them upon their corporal oath to be by you administered upon the Holy Evangely of Almighty God touching their knowledge or remembrance of anything that may relate to the cause aforesaid, and having reduced the depositions of the witnesses, so taken by you, into writing, you send the same with this commission closed, under your hand and seal, to the said circuit court with all convenient speed.

Witness the Honorable S. P. Chase, Chief Justice of our Supreme Court the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-seven. Issued October 14, '68.

JAS. W. CHEW,
Clerk Circuit Court.

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examination and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now or which may hereafter, before the said commission is closed, be produced to and left with you, by either party. So help you God.

STATE OF MAINE, *County of Knox:*

NOV'R 25, 1868.

Then personally appeared Peter Thacher, esq., above-named, and took the above oath.

Before me—

A. S. RICE, *Justice of thePeace.*

95 *Clerk's oath.*

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every witness and witnesses produced before, and examined by, the commissioner named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioner to take, write down, and transcribe the said depositions, or any of them: So help you God.

STATE OF MAINE, *Knox, ss:*

SEAL'S PLACE. CLERK'S OFFICE, SUPREME JUDICIAL COURT,
Rockland, April 7th, A. D. 1869.

I, Edwin Rose, clerk of the supreme judicial court for said county of Knox, being a court of record, do hereby certify that A. S. Rice is and, at the date of his certificate to the paper hereto annexed, was an acting justice of the peace within and for the county of Knox; that he is duly commissioned and qualified to administer oaths and take acknowledge-

ments of deeds and other instruments in writing, in the county aforesaid; and that the signature purporting to be his is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme judicial court for said State the day and year first above written.

EDWIN ROSE, *Clerk.*

96 And afterwards, to wit, on the 19th day of April, in the year of our Lord one thousand eight hundred and sixty-nine, the said owners of the steamship Fannie, by their proctor aforesaid, filed in the circuit court here the following depositions, to wit:

Deposition of John S. Beacham on the part of the appellants, taken before Isaac Brooks, junior, United States commissioner for the Maryland district, at his office in the city of Baltimore, on the 13th day of April, 1869.

John S. Beacham, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. What is your name, residence, and occupation?

Answer. My name is John S. Beacham; I reside No. 273 West Lombard st.; my occupation is that of a shipwright.

2nd. What length of time have you been engaged ship-building?

Answer. I have been engaged in that business forty years.

3rd interrogatory. Has your experience been such as to enable you to judge of the character and value of vessels?

Answer. I have had some experience in it.

4th interrogatory. Did you ever see the schooner in question, called the Ellen Forrester, of Deer Isle?

Answer. I have seen the schooner in question.

5th interrogatory. What was her size, as well as you can judge?

Answer. I should judge her to be a vessel of from eighty to eighty-five tons, carpenter's measurement.

97 6th interrogatory. Did you ever put any repairs upon her; if so, when?

Answer. I don't recollect the time exactly; but it was in the latter part of the winter, or the early part of the spring of 1868. It was a short time before she sailed on the voyage during which the collision occurred.

7th interrogatory. What estimate, as to value, would you consider a fair one at that time?

Answer. I had no way of making any estimate at that time. I merely saw her lying a distance off, at the stays. The repairs were very limited, not amounting to ten dollars, I think.

8th interrogatory. As far as your observation and opportunity enabled you to judge, what would a vessel of her class and description cost to build in 1861?

(Question excepted to.)

Answer. I should suppose a vessel of that class and size, in 1861, could have been built and fitted out for six thousand dollars.

9th interrogatory. What, to the best of your judgment, is the annual deterioration of such a vessel, kept in proper repair, and cared for?

Answer. I should suppose about ten per cent.

10th interrogatory. What do you suppose she was worth at the time you made the repairs?

Answer. I have no data to form a judgment on that subject, except on general principles and experience of vessels of her age. I was not on board of her.

98 Cross-examined.

1st cross-interrogatory. Are vessels of that class built at all at the port of Baltimore?

Answer. I believe there have been some built here, but there are none that have been built recently, to my knowledge.

2nd cross-interrogatory. What was the comparative cost of building a vessel in 1861, and in building one in 1868?

Answer. It would cost one-third more in 1868 than in 1861.

3rd cross-interrogatory. Who would you think better judges of the value of a vessel like the Ellen Forrester—competent ship-masters and sea-going men, who were familiar with [with] vessels, and had been on and sailed in the Ellen Forrester, and experienced her sea-going qualities, and were familiar with all her appointment, or men like Mr. Skinner, Mr. Applegarth, and yourself, who had no knowledge of the vessel, nor had made any examination of her, other than that testified to by them and by you?

(Question excepted to.)

Answer. The persons having the knowledge of the vessel, provided they had equal judgment.

Re-direct.

11th interrogatory. Did you see the vessel after she was raised above water, and did you examine her?

Answer. I did see her. I did not examine her particularly; she was covered with dirt and mud.

12th interrogatory. Could you judge of her then value, and
99 what would you consider her then worth in her then condition?

Answer. I could not judge of her value without a careful examination, which I did not make.

Re-cross.

4th cross-interrogatory. In your judgment, would the percentage of annual depreciation of a vessel, engaged in the fishing business, be as great as that of the same vessel engaged in the general carrying trade?

Answer. I think not.

Re-direct.

13th interrogatory. Have you ever had any personal experience in the fishing business spoken of?

Answer. I have not.

Sworn to before me this 13th day of April, 1869.

ISAAC BROOKS, JR.,
U. S. Commissioner in & for the District of Maryland.

The signing of the above deposition is waived by the respective proctors.

ISAAC BROOKS, JR., *U. S. Com'r.*

Deposition of James A. Skinner, on the part of the appellants, taken before the same commissioner, at the same time and place.

James A. Skinner, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and
100 being examined on behalf of the appellants, makes oath, deposes, and saith as follows, to wit:

1st interrogatory. What is your name, residence, and occupation?

Answer. My name is James A Skinner; I reside No. 71 Lee st., Baltimore; I am a ship-builder.

2nd interrogatory. What length of time have you been engaged ship-building?

Answer. Something over twenty-five years.

3rd interrogatory. Has your experience been such as to enable you to judge of the character and value of vessels?

Answer. It has.

4th interrogatory. Did you ever see the schooner in question, called the Ellen Forrester, of Deer Isle?

Answer. I saw her once.

5th interrogatory. What was her size, as well as you can judge?

Answer. I only passed by the vessel occasionally; and I did not notice her particularly. I should judge that she was between seventy and eighty tons, carpenter's measurement. Government measurement would make her one-third less.

6th interrogatory. What is the average age of a vessel of the character of the Ellen Forrester?

Answer. I have known them to be very rotten at five years, and some to be pretty good at ten. At ten years of age I should suppose a vessel to be pretty well used up, even where it is well cared for. If the vessel had been salted it would be better at five years of age than if it had not been salted.

101 7th interrogatory. Speaking, generally, of vessels, from your experience, what would be their value at seven years of age, as compared with their original cost, when they had been properly cared for and kept in good repair? Speak of a class of vessels of a similar character to the Ellen Forrester.

Answer. I should suppose that, at seven years of age, she would be worth three thousand dollars. If the vessel had been properly cared for, she would have been worth, at seven years of age, about one-half what it cost originally to build and fit her.

8th interrogatory. Is there any generally-received estimate among ship-builders, upon the subject in question, as far as your experience goes?

Answer. I think each ship-builder has his own estimate.

9th interrogatory. What do you mean by "that each ship-builder has his own estimate," and what is the general opinion upon that subject?

Answer. I estimate according to my own judgment, of the wear and tear. I deduct from the original cost, to the best of my judgment, the wear and tear of the vessel.

10th interrogatory. Upon how many years' experience is your judgment based?

Answer. I have been carrying on the business of ship-building for over twenty-five years.

Cross-examined.

1st cross-interrogatory. State the extent of your personal knowledge of the character, condition, and value of the Ellen Forrester?

102 Answer. I have no personal knowledge on the subject. I never saw the vessel but once, and I did not examine her particularly at that time. I was not on board of her.

2nd cross-interrogatory. Do you know whether she was coppered or copper-fastened?

Answer. I do not.

3rd cross-interrogatory. Do you know whether she was what is often known as a fishing schooner or not?

Answer. I suppose she was from her model.

4th cross-interrogatory. How do such schooners generally compare in style, finish, and value with ordinary schooners built for the general carrying trade?

Answer. They compare very favorably; they are very well finished.

5th cross-interrogatory. About what is the highest rate ever given to schooners of that size?

Answer. When new, the highest rate is A No. 1½; that is my impression.

Sworn to before me this 13th day of April, 1869.

ISAAC BROOKS, JR.,
U. S. Commissioner.

The signing of the above deposition is waived by the respective proctors.

ISAAC BROOKS, JR.,
U. S. Com'r.

Deposition of L. J. Applegarth, on the part of the appellants, taken before the same commissioner at the same time and place.

103 L. J. Applegarth, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. What is your name, residence, and occupation?

Answer. My name is L. J. Applegarth; I reside No. 28 Fawn st., Baltimore; I am a ship-carpenter, and carry on a marine railway.

2nd interrogatory. What length of time have you been engaged in ship-building?

Answer. Twelve years.

3rd interrogatory. Has you experience been such as to enable you to judge of the character and value of vessels?

Answer. It has.

4th interrogatory. Did you ever see the schooner in question, called the "Ellen Forrester," of Deer Isle?

Answer. I never saw the schooner in question.

5th interrogatory. What would be the value of a northern-built fishing schooner of sixty-nine tons, new government measurement, as far as your experience of that class of vessels goes?

Answer. About seven thousand dollars.

6th. What would a vessel of that class be worth at six years of age, allowing for ordinary wear and tear, with proper care and attention?

Answer. She would be worth about fifty per cent. on cost; that would be my experience.

Cross-examined.

1st cross-interrogatory. Is there much difference in the style
104 and finish of fishing schooners of a given size?

Answer. They have the character of being very well-built vessels. I know nothing about the vessel in question.

2nd cross-interrogatory. Have you had much experience of vessels built in Maine and Massachusetts for the fishing service?

Answer. I have very little.

Re-direct.

7th interrogatory. What is the usual life of a vessel of the description that the Ellen Forrester is represented to be, with ordinary care and attention?

Answer. Some of them last a good deal longer than others. I should think the usual life to be sixteen years. I have known some to last a longer time, and some less.

8th interrogatory. What is regarded among ship-builders as the average annual depreciation of a vessel of the character of the one inquired of?

Answer. Ten per cent., I should think, of the original cost.

Re-cross-examination.

3rd cross-interrogatory. In estimating the annual depreciation of ten per cent. of the original cost, do you mean to apply that estimate to a craft built like the Ellen Forrester for fishing purposes, or to a craft of that size built for the general carrying trade?

Answer. I mean it for crafts built for the carrying trade. I know nothing about the Ellen Forrester.

Re-direct.

9th interrogatory. Would you make a different estimate in the case of a down-east fishing vessel?

105 Answer. I would not without thoroughly examining it.

10th. Are they, with ship-builders, generally estimated in this respect differently from other vessels, as far as your experience goes?

Answer. Their character stands very well with ship-builders in my judgement; I should value a fishing vessel just as I would any other.

Sworn to before me this 13th day of April, 1869.

ISAAC BROOKS, JR.,
U. S. Commissioner.

The signing of the above deposition is waived by the respective proctors.

And afterwards, to wit, on the said nineteenth day of April, in the year last aforesaid, the said Daniel Allen and others, by their proctor aforesaid, filed in the circuit court aforesaid the following depositions, to wit:

Deposition of Solomon G. Buckminster on the part of the appellees, taken before Isaac Brooks, jun., United States commissioner for the Maryland district, at his office in the city of Baltimore, on the 2nd day of April, 1869.

Solomon G. Buckminster, being by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. What is your age, residence, and occupation?

Answer. I am thirty-four years old; I reside in South Deer
106 Isle, Maine; I am a seaman.

2nd interrogatory. State how long you have been a seaman, in what vessels you have sailed, and in what capacity.

Answer. I have been a seaman for sixteen years; I sailed in all kinds of vessels, from a ship to a sloop; I have been mate of the Ellen Forrester about a month and a half; the Lilly M. Warren a year and a half; the Rebecca S. Warren two years or upward. I have been captain of the last two vessels. I was captain of the Lilly M. Warren for about six months; I have been master of her twice. I was master of the Rebecca S. Warren one fishing voyage. I have been master of the schooner called Casseta one voyage. I was master of the Sarah one year. I was master of a vessel called the Billow one voyage. I was master of a vessel called the Mary about six months.

3rd interrogatory. When did you sail on the schooner Ellen Forrester as mate?

Answer. I shipped on board the Ellen Forrester March 19th, 1868, and continued on her as mate until she was sunk in the Chesapeake Bay on the 29th of April, 1868, in the morning.

4th interrogatory. Who else was on the Ellen Forrester with you at the time that she was sunk?

Answer. Daniel Allen was master; Jacob Briant & Wallace Allen were seamen; John Allen was cook—five in all.

5th interrogatory. From what place did you start on the last voyage of the Ellen Forrester; when, and with what cargo?

Answer. We started from Baltimore at the iron wharf, at the Lazeretto, going to Providence, Rhode Island, with a cargo of one
107 hundred tons of pig iron. We started April 28th, about ten or half past in the morning.

6th interrogatory. What course did you pursue and what occurred?

Answer. We took the usual course of vessels bound down the bay, and nothing special occurred until the collision and sinking of the schooner, about 2 o'clock of the night succeeding that day.

7th interrogatory. Who was on deck and in charge of the schooner at the time of the collision with the steamer?

Answer. I was on deck with the seaman Briant; it was our watch, and no one was on deck beside us. We went on deck at twelve o'clock; we relieved Captain Allen and Wallace Allen, and they went below.

8th interrogatory. What was the weather at the time that you were on deck until the time of the collision?

Answer. The weather was fair; that is, it did not storm; there were passing clouds. There was no fog at the time.

9th interrogatory. Where were you at the time you took charge of the deck, and at what rate were you sailing from that until the schooner sunk, and on what course?

Answer. We were between Core Point and Point Lookout. I should

judge that we were sailing at the rate of seven knots; we were sailing south by east half east; that is the usual course at that place.

10th interrogatory. What changes had been made during those two hours in the course of the Ellen Forrester?

Answer. There had been no changes made in her course.

11th interrogatory. Who had been at the wheel during the time?

Answer. I had the wheel from twelve to one o'clock; Jacob
108 Briant had the wheel from one o'clock until the time of the collision.

12th interrogatory. How were you employed from the time that Briant took the wheel until the time of the collision?

Answer. I was keeping a lookout.

13th interrogatory. State what lights the schooner had, if any, at the time of the collision.

Answer. She had a red and green light; her red light was in the port rigging. I should suppose they were about ten feet above the rail; that is, I believe, the usual place. I know they were in the usual place. I think the law says ten feet, but I don't know the law.

14th interrogatory. State the manner, circumstances, and effect of the collision of which you have spoken.

15th interrogatory. We were struck by the steamer on the port bow; it broke our bowsprit off at the knight-heads, and broke in between the knight-heads, and the fore-rigging, and sprung a plank off about two streaks below the wale, which caused the schooner to sink, I should think, inside of ten minutes.

16th interrogatory. What did you do on board the schooner after the collision?

Answer. The first thing I did after the collision was to go aft and take up the skuttle; that was to see if the schooner was making water or filling up; just at that time I could see no water. We then lit the lantern, and the captain and I went forward together, to see what damage was done. We found that the bowsprit was broken off at the knight-heads, and she was broken in between the fore-rigging
109 and the knight-heads, and that the fore-rigging—that is, the port fore-rigging—was carried away. Captain Allen then went down to the forecastle; I saw him go there, but did not go with him; he came up, and I took the light and looked over the port bow, and found the plank was broken in below the wale, and could hear the water rushing in below. I then went aft to see if the boat was ready to lower. Jacob Briant and I lowered the boat. I jumped in the stern of the boat, and with my knife cut the davit-fall; the crew jumped in, I should judge, in two or three minutes after; the capt. came last. We cast the painter off and dropped astern, the vessel going ahead; the schooner went about a length ahead, when she went down before we got out our oars, the surf from the sinking vessel coming nearly to our boat. Then we got out our oars and rowed for the light on Point Lookout, which was distinctly visible until we got there; I should judge it was half past three o'clock when we got there; I don't know the time exactly, as we had no means of telling.

17th interrogatory. What was done by those on board of the steamer after the collision?

Answer. I did not see anything done; I can't say that nothing was done, because I did not see.

18th interrogatory. Did the steamer, so far as you could observe, stop, slacken her speed, change her course, or send out a boat, after the collision?

Answer. She did not.

110 19th interrogatory. What was the size, character, condition, and value of the Ellen Forrester at the time of the collision?

Answer. I think her tonnage was sixty-seven tons, new tonnage; I cannot be exact; she was a good vessel, well built, with good sails, rigging, and anchors; their condition was good; her sails were nearly new. I should judge that the vessel, at the time she was sunk, was worth seventy-five hundred dollars.

20th interrogatory. What was saved from the Ellen Forrester after the collision?

Answer. There was nothing saved, to speak, except the boat.

21st interrogatory. State whether you lost any property by the collision; if so, the value of the property which you lost.

Answer. I did lose some property; I should judge that I was out a hundred dollars of property by the sinking of the vessel; it consisted of clothing, books, charts, & such like.

22nd interrogatory. About how wide is the Chesapeake Bay at the place of collision, and about how far was the place of collision from Point Lookout?

Answer. I should judge it was ten or twelve miles at the place of collision. The place of collision was somewhere between three to five miles from Point Lookout, and about east from Point Lookout.

23rd interrogatory. About how high above the water was the deck of the schooner, as you were running her that night, and about how high was the deck of the steamship?

Answer. The water was about four inches below the deck; we were loaded very deeply. The top of the rail was about four feet above

111 the water. I can't tell how high the deck of the steamship was.

24th interrogatory. Did the steamer give any signal or hail, ring a bell, or blow a whistle, or in any other manner notify you of her approach before the collision?

Answer. I did not hear any.

25th interrogatory. What was the character, as a seaman, of the man at the wheel at the time of the collision?

Answer. He was a good seaman, a good wheelsman, and seemed to understand his business.

26th interrogatory. Could he have changed the course of the schooner, after he took the wheel, without your knowing it.

Answer. He could not have done it without my knowing it.

27th interrogatory. Why did you not change the course of the schooner as the steamer approached?

Answer. I did not see the steamer until about the time they came together.

28th interrogatory. What change in her course should you have made if you had discovered the steamer earlier?

Answer. I should not have changed her course at all. I should not have changed it if I had seen the steamer an hour before the collision.

29th interrogatory. Why not?

Answer. Because it is against the law.

Cross-examined.

1st cross-interrogatory. Which way was the wind?

Answer. The wind was east-northeast; we were steering south by east half east.

2nd cross-interrogatory. What sails were you under?

112 Answer. We had all sails set; that is to say, the four lower sails and gaff-topsail. The sails I refer to are foresail, mainsail, jib and flying jib, and the main-gaff-topsail.

3rd cross-interrogatory. Could you see the lights of vessels approaching and passing, and, if so, at what distance?

Answer. We could see the steamers' lights rounding Point Lookout, up the Potomac river. We could see them four miles.

4th cross-interrogatory. On which side of the schooner were your sails trimmed?

Answer. On the starboard side; that is, the right side.

5th cross-interrogatory. Where were you standing at the time of the collision?

Answer. I was standing on the break or starboard quarter at the time of the collision. The break is two or three feet forward of the main rigging.

6th cross-interrogatory. How was the wind, fresh or otherwise?

Answer. We were going along at the rate of seven knots; the wind was fair. Our vessel can go twelve miles.

7th cross-interrogatory. Was the bowsprit, when broken, thrown overboard towards the port or starboard bow?

Answer. The starboard bow, opposite to the bow upon which we were struck.

8th cross-interrogatory. Do you know what the Ellen Forrester cost to build?

Answer. I do not.

9th cross-interrogatory. Have you any knowledge as to the cost of building vessels?

113 Answer. I never had a vessel built myself, but I know what it costs to build them; about sixty-two dollars a ton, carpenter's measurement, exclusive of cost of sails and rigging. Carpenter's measurement is different from the new tonnage; it took ninety-five feet to the ton, the new tonnage takes a hundred.

10th cross-interrogatory. How long before the collision was it that you saw the steamer?

Answer. I did not see her until near the time she struck.

11th cross-interrogatory. Was her approach reported by you to the man at the wheel?

Answer. It was not.

12th cross-interrogatory. What has become of the schooner Ellen Forrester?

Answer. I don't know.

Re-direct.

30th interrogatory. Were you stationary at the time of the collision, or were you moving about in keeping the lookout?

Answer. I had just come from the port bow about three minutes; I was moving about from place to place, keeping a lookout.

31st interrogatory. Were there sails, or any other obstacles on board your schooner, intervening to prevent your looking forward, and seeing any vessel approaching, at the place where you were at the instant of the collision?

Answer. There were not.

32nd interrogatory. To what, if anything beside keeping a lookout, were you attending at the instant of the collision?

Answer. I was not attending to anything else.

114 33rd interrogatory. On a vessel of the size of the Ellen Forrester, what is the duty of the lookout?

Answer. All that a man before the mast has to do, when acting as lookout. The officer of the deck, when he has the lookout, has to see to the trimming of the sails, and see that the course is steered, and keep a lookout at the same time, and that is easy enough to do.

34th interrogatory. In a vessel of that size, in what particular spot should the lookout remain?

(Question objected to.)

Answer. There is no particular spot, in my judgment.

Re-cross.

13th cross-interrogatory. Upon the occasion alluded to, about the time of this collision, who was the officer in charge of the deck, and who was acting as lookout?

Answer. I was officer of the deck, and acting as lookout myself.

14th cross-interrogatory. How do you account for not seeing the approach of the steamer Fannie?

Answer. It was a dark night. I think that her lights, if she had any, were very dimn; she was a black steamer, and being a propeller, making no noise, I did not hear her, to attract my notice.

15th cross-interrogatory. I understood you to say, that the lights of steamers, rounding Point Lookout, could be readily seen some four miles distant; am I not right in such understanding?

Answer. You are.

115 Re-direct.

35th interrogatory. How recently before the collision had you seen a steamer rounding Point Lookout?

Answer. I saw one two minutes before the collision.

36th interrogatory. How recently before the collision had you examined your own lights?

Answer. Five to three minutes.

SOLOMON G. BUCKMISTER.

Subscribed and sworn to before me this 2nd day of April, 1869.

ISAAC BROOKS, JR.,
U. S. Commissioner in & for the District of Maryland.

Deposition of James Carey Coale, on the part of the appellees, taken before the same commissioner, at the same place, on the 6th day of April, 1869.

James Carey Coale, being by me first carefully examined and cautioned, and duly affirmed according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. What is your residence, occupation, and place of business?

Answer. I reside in Baltimore; I am agent for the underwriters; my place of business is at Exchange Place.

2nd interrogatory. State, if you know, the rate, class, place of build, and any other facts you may know with reference to the Ellen
116 Forrester, sunk in the Chesapeake Bay in April, 1868.

Answer. I am familiar with the schooner Ellen Forrester, having insured cargo by her frequently. She classed on the underwriters' registers as A No. 1½. She was what is technically known among the underwriters as a fishing schooner. She was built at Essex, Massachusetts, according to the underwriters' books. The rate which she bore on the underwriters' books was the highest that a vessel like her was entitled to. No schooner could rate higher. I regarded her as a good little vessl.

3rd interrogatory. State your knowledge of her cargo at the time when she was sunk, in April, 1868; the kind, quantity, value, and amount of damage or loss on said cargo from the sinking of said schooner.

Answer. She had a hundred tons of pig iron on board. I saw it myself. I think the cargo, that is, the iron, was worth in this market forty-eight dollars per ton. The underwriters paid a total loss of fifty-six hundred dollars, and took the savings, which amount to, after paying salvage, eight hundred and twenty-nine dollars and fifteen cents, the salvage being, at the rate of eighty per cent., three thousand three hundred and sixteen dollars and sixty cents; this was on the cargo, and had nothing to do with the vessel, making the total amount of sales of the cargo saved four thousand one hundred and forty-five dollars and seventy-five cents.

4th interrogatory. State the amount realized, net, from the vessel herself, after paying the salvage thereof.

117 Answer. The same percentage of salvage having been paid on the vessel as on the cargo, and the vessel having been sold at auction to the highest bidder, the net proceeds, after the salvage and expenses of sail, was one hundred and fifty-six dollars and forty-six cents, which I paid over to the agents of the owners.

5th interrogatory. State the character of the injuries sustained by the vessel from the collision, so far as you saw it, after the vessel was raised.

Answer. I saw the direct result of the collision on the vessel's hull, but cannot now remember it sufficiently to describe it. The principal appearance of damage was from the crushing in of the decks by the superincumbent weight of the water; even the forward beams, which sustained the decks, were broken.

Cross-examined.

1st cross-interrogatory. You have referred to "underwriters' registers." How often and at what periods of time are they published?

Answer. Once a year.

2nd cross-interrogatory. Are not the rates assigned to each vessel generally transferred from one publication to the other?

Answer. I believe they are; the lazy inspector would copy the old rates without inspecting himself.

3rd cross-interrogatory. State how the publisher of the registers ascertains and fixes the rates.

Answer. If he has never seen the vessel himself, he relies upon the report of his experts; it is necessarily so. He is not expected to see every vessel.

118 4th cross-interrogatory. Is it customary for the underwriters to regard, as conclusive of the condition and character of a vessel, her rate thus stated in the registers, or do they not rather, when the rate is a question of importance, examine and determine this question themselves?

Answer. Each underwriter uses the reports as a general guide for his judgment, and fixes his own rates of premium in accordance therewith. It is not customary for underwriters to regard, as conclusive of the condition and character of a vessel, her rate thus stated in the registers.

5th cross-interrogatory. Do you know whether or not there was any insurance on the vessel? If so, to what amount?

Answer. I have no personal knowledge.

6th cross-interrogatory. Have you not the same knowledge as to the insurance upon the vessel as that which enables you to speak of the insurance upon the cargo?

Answer. No; because the underwriter of the cargo was here, and turned the matter over immediately into my hands.

7th cross-interrogatory. Did you ever hear anything from the libellants in this cause in reference to the insurance; and, if so, what did they say?

Answer. To the best of my recollection the captain told me that there was a small interest insured. I think he said fourteen hundred dollars on a valuation of seventy-five hundred dollars.

8th cross-interrogatory. Did he say whether or not this had ever been paid, or have you any knowledge upon this subject?

Answer. I have no knowledge whatever.

119 9th cross-interrogatory. What amount, if any, has been paid by the underwriters to the owners of the cargo?

Answer. I think they paid as for a total loss of fifty-six hundred dollars, taking the savings.

Re-direct.

6th interrogatory. Was "the underwriters' registers," which have been spoken of in your evidence, the same work that is sometimes called Lloyds Register or the American Lloyds?

Answer. One was the American Lloyds Register, published at New York, and the other was what is known as Clackner's Baltimore Marine Reports. The Ellen Forrester rated the same, I believe, in both.

7th interrogatory. State, if you know, by whom the examinations or inspections of a vessel are made for Clackner's Baltimore Marine Reports.

Answer. They are made exclusively by Capt. Joseph Clackner and Capt. Joshua Burney.

8th interrogatory. State what personal knowledge you have of the copying of the records of the Ellen Forrester, from any former edition of the American Lloyds, into the latest edition in which she was rated as a No. 1½.

Answer. I have no personal knowledge in regard to this particular case. I know that it has sometimes been done.

Re-cross.

10th cross-interrogatory. Is not your knowledge upon this subject partially derived from finding these rates as registered often erroneous at the time when they are referred to, as in cases of old ves-

120 sels?

(Question excepted to.)

Answer. Errors of that kind are not often made.

11th cross-interrogatory. Are not these registers works of private and individual interprise, got up for individual purpose and speculation?

(Question excepted to.)

Answer. They are.

12th cross-interrogatory. Are the publishers of these registers recognized appointees of Lloyds London or American underwriters?

Answer. They are appointees for some purposes, but not for the classification of vessels; the underwriters use them as a sort of guide.

13th cross-interrogatory. Is not Joseph Clackner referred to quite an infirm old man?

Answer. He is about ninety-two years old, and is an infirm old man, but he is pretty general in the attendance of his business.

Re-direct.

9th interrogatory. What other guide, besides the underwriters' registers, is used in fixing the rates of premium when the vessel is elsewhere than in the port of the underwriters?

Answer. Almost all the companies have their own inspectors in home and in many foreign ports. Where they can't get their information through their own inspectors, either at home or abroad, they are guided by the classifications to be found in the different registers.

JA'S CAREY COALE.

121 Subscribed and affirmed to before me this 6th day of April, 1869.

ISAAC BROOKS, JR.,
U. S. Commissioner.

All the above testimony is taken subject to exceptions.

ISAAC BROOKS, JR.,
U. S. Com'r.

Deposition of John L. Reed, on the part of the appellees, taken before the same commissioner at the same time and place.

John L. Reed, being by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. What is your residence and business?

Answer. I reside in the city of Baltimore. I am a partner in the firm of Stickney & Co., composed of J. H. Stickney, myself, and Thomas J. Case, the claimants, shippers and owners of one hundred tons of iron shipped on the Ellen Forrester about the last of April, 1868.

2nd interrogatory. What was the value of the iron shipped by your house on the Ellen Forrester?

Answer. It averaged at the port of Baltimore forty-nine dollars and a half per ton. There were two lots sold at different prices; one lot was sold at fifty-two dollars, and the other at fifty-three dollars, deliverable at Providence, Rhode Island. We had to pay three dollars per ton freight, netting one lot forty-nine dollars and the other fifty dollars, averaging forty-nine dollars and a half.

122 Cross-examined.

1st cross-interrogatory. Did you see the iron after it was recovered from the wreck?

Answer. We bought it. I don't know whether I saw that particular iron or not.

2nd cross-interrogatory. Whom did you buy it of, and by whose authority was it sold?

Answer. We bought it of the underwriters at private sale, and paid forty-five dollars per ton for it, delivered at our furnace.

3rd cross-interrogatory. What was the market value of that iron at the port of Baltimore at the time of its loss?

Answer. We were selling iron of a similar quality, delivered on board of vessels, at forty-eight to fifty-two and a half dollars, depending on the grade and selection. We have six numbers or different grades, and prices vary according to the grade.

4th cross-interrogatory. What was it worth at your yard?

Answer. The prices I have stated above.

JOHN L. REED.

Subscribed and sworn to before me this 6th day of April, 1869.

ISAAC BROOKS, JR.,
U. S. Commissioner.

All the above testimony is taken subject to exceptions.

ISAAC BROOKS, JR.,
U. S. Commissioner.

123 Afterwards, to wit, on the 23d day of April, in the year last aforesaid, the court here made and passed the following decree, to wit:

Decree.

In the circuit court of the United States for the 4th circuit, district of Maryland.

THE STEAMER FANNIE, APPELLANT,
vs.
DANIEL ALLEN & OTHERS, OWNERS OF SCHOONER Ellen Forrester. } Appeal.

The above cause standing ready for hearing, & having been argued by the proctors of the respective parties, & the same having been fully heard & duly considered, it is, this 23d day of April, 1869, adjudged, ordered, & decreed that the decree of the district court appealed from be, & the same is hereby, reversed; & it is further adjudged & decreed that the appellees recover of the appellants in the cause the sum of ten thousand four hundred & sixty-five dollars, with interest from the 29th of April, 1868, till paid; that is to say—

The libellants, owners of said schooner, the sum of six thousand dollars	$6,000
The libellants, owners of the cargo of said schooner, the sum of thirty-eight hundred & fifty dollars	3,850 00
The libellant Dan'l Allen, three hundred & fifty doll's	350 00
Carried forward	10,200 00

	Brought forward	10,200 00
	The libellant Solomon G. Buckminster, the sum of	
124	one hundred dollars	100 00
	The libellant Jacob S. Bryant, one hundred doll's	100 00
	The libellant Jno. S. Allen, thirty-five dollars	35 00
	The libellant Walter Allen, thirty dollars	30 00
		$10,465 00

It is also decreed that the said sum of ten thousand four hundred dollars, with interest the 29th of April, 1868, till paid, be paid on or before the tenth day of May, 1869, or execution be issued against them.

It is also decreed that the appellants pay the costs in the district & circuit courts.

S. P. CHASE,
Chief Justice of the U. States.

From which said decree, so as aforesaid passed, the owners of the said steamship Fannie, by their proctor aforesaid, in open court here prayed an appeal to the Supreme Court of the United States to be held at the city of Washington, on the first Monday of December next; and to them it is granted.

Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating thereto, be transmitted to the Supreme Court, and the same is transmitted accordingly.

Appeal bond.

Know all men by these presents that we, Wash'n Booth, Jacob Brandt, jr., of Baltimore City, and State of Maryland, are held
125 and firmly bound unto Daniel Allen & others, owners of the schooner Ellen Forrester, in the sum of twenty-one thousand dollars, to be paid to the said Daniel Allen and others, their executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this thirtieth day of April, in the year of our Lord eighteen hundred and sixty-nine.

Whereas heretofore, to wit, on the thirtieth of April, in the year of our Lord eighteen hundred and sixty-eight, Daniel Allen & others filed their libels in the district court of the United States in and for the Maryland district against the steamship Fannie in a cause of collision, civil and maritime:

And whereas, at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in June, in the year of our Lord one thousand eight hundred and sixty-eight, to wit, on the nineteenth day of June, A. D. 1868, by the decree of the said court, the libellants recovered the sum of ten thousand three hundred and sixty-five dollars, from which said decree, so as aforesaid , the owners of the steamship Fannie prayed an appeal to the circuit court in and for the Maryland district, to be held at the city of Baltimore on the first Monday in November next, A. D. 1868:

And whereas, at a circuit court of the United States, begun and held, at the city of Baltimore, on the first Monday in April, in the

126 year of our Lord one thousand eight hundred and sixty-nine, to wit, on the twenty-third day of April, anno Domino 1869, the decree of the said district court was reversed, and the owners & claimants of the steamship Fannie were decreed to pay to the said Daniel Allen & others the sum of ten thousand four hundred and sixty-five dollars, with interest from April 29, '68, & costs, from which said decree, so as aforesaid , the owners of the steamship Fannie have prayed an appeal to the Supreme Court of the United States to be held at Washington, in the District of Columbia, on the first Monday in December next:

Now, the condition of the aforegoing obligation is such, that if the said owners of the steamship Fannie shall well and truly prosecute with effect their said appeal, and pay unto the said Daniel Allen & others, their heirs, executors, administrators, or assigns, the amount of their said decree, interest, costs, and charges aforesaid, adjudged unto them by the said circuit court, and also all such amount, costs, and charges as may be awarded unto them by the said Supreme Court, in case they, the said owners and claimants of the steamship Fannie, shall fail to make good their said appeal, then the above obligation to be void & of none effect; otherwise to be & remain in full force and virtue in law.

WASH'N BOOTH. [SEAL.]
J. BRAND'T, JR. [SEAL.]

Signed, sealed, & delivered in the presence of—
G. O. S. LONGCOPE.

127 In testimony that the aforegoing is a true copy, taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name, and affix the seal of the said circuit court, this twenty-third day of October, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 300. The steamship "Fannie"—the Baltimore and Savannah Steamship Company, claimants—appellants, vs. the schooner "Ellen Forrester"—Daniel Allen et al., claimants. Maryland C. C. U. S.

Filed 2d December, 1869.

Supreme Court of the United States.

STEAMER FANNIE.—THE BALTIMORE AND SAVANNAH STEAMSHIP COMPANY.—Claimants.

Appellant.

vs.

THE SCHOONER ELLEN FORRESTER.—DANIEL ALLEN *et al.*—Claimants.

Appeal from the Circuit Court of the United States for the District of Maryland.

BRIEF AND ARGUMENT

OF

A. [illegible] RIDGELY,

Proctor for Appellants.

Supreme Court of the United States.

STEAMER FANNIE,—THE BALTIMORE AND SAVANNAH STEAMSHIP COMPANY,—CLAIMANTS, APPELLANT,

vs.

THE SCHOONER ELLEN FORRESTER,—DANIEL ALLEN ET AL.—CLAIMANTS.

Appeal from the Circuit Court of the United States for the District of Maryland.

APPELLANT'S BRIEF.

THIS is an Appeal by the Baltimore and Savannah Steamship Company, claimants of the Steamer "Fannie," from the Circuit Court of the United States for the District of Maryland, sitting in Admiralty.

It was a case of collision occurring in the Chesapeake Bay, between the Steamer "Fannie" and the Schooner "Ellen Forrester."

The libel was *in rem* filed by the Appellees, against the Steamer "Fannie."

The Baltimore and Savannah Steamship Company, intervened as the owner of the "Fannie."

The District Court decreed in favor of the Libellants in the sum of $10,365 and costs.

On an Appeal by the Steamship Company to the Circuit Court, additional evidence was introduced, as to the loss sustained by one of the crew of the "Ellen Forrester," and the decree of the District Court was reversed, and a decree entered in favor of the Libellants in the sum of $10,465 with interest till paid, and costs.

The amended Libel [pages 7 and 8 of printed Record,] states "that on the 28th April, 1868, the Schooner sailed from Baltimore, Maryland, with a cargo of pig iron, on a voyage to Providence, Rhode Island.

"That during the voyage, about ten minutes before two o'clock on the morning of the 29th April, 1868, the Schooner being then about four miles from Point Lookout Lighthouse, with the wind about north-east, said Schooner standing on her course, 'south by east, one-half east,' the mate, who then had the watch, and was the commanding officer on deck, discovered a Steamer approaching, which turned out to be the "Fannie," but saw no lights or signals on, or from her, and, before he was able in the darkness, to ascertain her bearing and direction, or take any steps to avoid a collision with her, the said Steamer ran against and struck the said Schooner on her port-bow, injuring her so, that she filled with water, and within ten minutes of such collision sunk, and was with her cargo totally lost.

"That when the 'Fannie' was first discovered, the lights of the Schooner were in proper place and condition, and could easily have been seen from the Steamer, and *if she had kept a good look-out*, must have been seen by her at a considerable distance, and in season to have enabled her to give way and prevent a collision. And at the time when a collision first became imminent, if the Steamer had had a proper watch on deck, she could by changing her course have passed the Schooner in safety, or by stopping the engines, have so slackened her speed as greatly to have diminished the violence of the blow; but instead of so doing, she kept on her previous course, and made no effort to prevent a collision, or weaken the force thereof. Then stating the value and nature of the property lost, the Libel concludes with the charge, that the damages sustained, were caused by reason of the careless, negligent and unskillful management of those in charge of the Steamer."

The answer admits the collision and alleges, "that on the morning of the 29th April, 1868, about one and a half o'clock the Steamer "Fannie" was steering a north by west course up

the Chesapeake on a voyage from Savannah to Baltimore, when those in charge saw the lights of the Schooner *one point on Steamer's port-bow, some* four miles distant, said Schooner bound apparantly down the Bay in a south by east course. That the courses of the respective vessels were such, at the time, as to afford ample room for them to pass without danger of collision, and that they would have done so had the Schooner adhered to the course she was on. Nevertheless, the wheel of the "Fannie" was ported so as to throw them further apart. That, shortly after this, the Schooner altered her course to the eastward, across that of the Steamer, which seeing, the latter starboarded her wheel so as to go west of the former, when suddenly the Schooner fell away from the wind westward across the last taken course of the Steamer. The Steamer's wheel was then put hard-aport, but by this time they were so near each other that it was not possible for the Steamer to avoid a collision, and their port-bows struck in passing.

"That the said Steamer, when she left the port of Savannah on her voyage to Baltimore, and during the whole of said voyage, was in every respect fully equipped, provided, officered and manned.

"That their lights were excellent and were displayed in their proper places, both at the moment and long before the collision.

"That proper and efficient lookout was kept on board of her during the whole voyage, that the said collision and damage was not produced by any fault or negligence on her part, but was produced solely by the ignorance, want of skill, negligence and mismanagement of those in charge of the Schooner."

Before examining the evidence, the Court is referred to the following rules applicable to cases of collision:

Certain Rules of Navigation, as declared by the Act of Congress of the 27th April, 1864, ch. 69.

"*Article 15th.*—If two ships, one of which is a sailing ship and the other a steamship, are approaching in such directions as to involve risk of collision, the steamship shall keep out of the way of the sailing ship.

"*Article* 18*th*.—Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course; subject to the qualifications contained in the following article.

"*Article* 19*th*.—In obeying and construing these rules, due regard must be had to all dangers of navigation, and due regard must also be had to any special circumstances which may exist in any particular case, rendering a departure from the above rules necessary, in order to save immediate danger.

"*Article* 20*th*.—Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequence of any neglect to carry lights, or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

13th U. S. St. at Large, page 58.
2 Brightly's Dig. 428—429.
1 Parsons on Sh. & Ad. 548, 592.

The generally established rules and known usages should be carefully followed; for every vessel has a right to expect that every other vessel will regard them.

1 Parsons, Sh. and Ad. 580.
Str. Oregon *vs.* Rocca, 18 How. 570, 572.
Newton *vs.* Crockett, 18 How. 581, 583.

General Rules determined by the Courts concerning the loss and the party upon whom it falls.

"1st. The party in fault must suffer his own loss, and compensate the other party for what loss the latter may sustain.

"2nd. If neither be in fault the loss rests where it falls.

"3rd. If both are in fault the loss shall be divided between them, unless they are both willfully in fault, in which case the loss rests where it falls.

"4th. If there is reasonable doubt as to which is to blame the loss must be sustained by the one on which it has fallen.

5th. "In cases of inscrutable fault, or where there is fault somewhere, but it is impossible to tell which is to blame, the loss rests where it falls."

1 Parsons, on Sh. and Ad. 525. &c.
1st. Conkling's U. S. Ad. 371 to 382.
Union St. Ship's Co. *vs.* N. Y. V. St. Sh. Co. 24 How. 313 314.
Sturges *vs.* Clough, 21 How. 451.
The Grace Girdler, 7 Wallace, 196, 203.
Starbuck *vs.* Roe, 14 How. 532, 538.
The Morning Light, 2 Wallace, 556.

Other General Rules established in collision cases.

In a cause of damage for injury sustained by collision, "the burthen of proof to establish the charge of negligence, or want of skill rests in general upon the Libellant; in other words, in order to entitle him to reparation, there must be a preponderance of evidence in his favor."

Conkling's Ad. 2nd. Ed. 382.
The Catherine of Dover, 2 Haggard, 145, 153.

A Plaintiff in a cause of collision, "must prove both care on his own part, and want of it in the Defendant; and if a collision has happened, and one vessel has been guilty of some negligence, the burthen is on her to prove, that this negligence is not the cause of the collision."

1 Parsons on Sh. and Ad. 528, 529.
The Steam Tug Wm. Young, Olcott 41.
The Relief, Olcott, 104.
The Columbus, Abbott's Ad. R. 384.
The Steamboat New Jersey, Olcott, 419, 420.

ARGUMENT ON BEHALF OF THE APPELLANTS.

Keeping in view the preceeding Rules, let us now examine the pleadings and evidence, for the purpose of ascertaining where the fault lies and upon whom the loss should fall.

And the Appellants contend :

That the evidence on the part of the Libellants (Appellees) is uncertain, unsatisfactory and insufficient ; that any presumption or conclusion to be drawn from it favorable to the Appellees, is rebutted by other evidence in the cause showing that the schooner was in fault, and that there was no want of care and no error of judgment on the part of the steamer, in any respect.

That after the approach of the schooner had been ascertained by those in charge of the steamer, and the latter had elected upon which side to pass the schooner, the schooner deviated ; that such deviation was the proximate and only cause of the collision, and if such deviation had not been made, the vessels would have passed each other in safety.

That, regardless of the management or conduct of those in charge of the steamer, as it may appear from the evidence, the evidence shows fault on the part of the Appellees, such as must prevent them from recovering for more than a divided loss.

The Libellants, to maintain their case, contended, in the Court below, "That the steamer was without lights, and that she ran into the Ellen Forrester while the latter was on her course, in violation of the requirements of the Rules of Navigation."

The Ellen Forrester was a schooner of some sixty-nine tons. Her crew consisted of Daniel Allen, part-owner and master, Solomon G. Buckminster, mate, Jacob S. Bryant, Wallace Allen and John C. Allen, seamen—five, all told. Two of these only, Buckminster and Bryant, were upon deck at the time of the collision, and they, with the master, were the only ones examined in reference thereto. The other witnesses, testifying on behalf of

the Libellants, do so only as to value of the property lost. They have all a direct pecuniary interest in the result of the case; a fact which weighs always against a witness' credit, and subjects his statements to careful scrutiny.

Captain Allen states (see Record, page 9): "At twelve o'clock Tuesday night, the 28th of April, my watch was out; and I was relieved by the mate. *We were standing south by east, one-half east.* The wind was about north-east. The weather was clear; the sky was slightly overcast. We were about south-east from Cove Point light-house, distant about eight miles. I went below about half-past twelve." How he was enabled to speak so precisely as to the standing of the vessel at the time—"south by east one-half east"—is not explained. He does not profess to speak by any observation of the compass, nor does it anywhere appear in evidence that they had one on board. Nothing is said of it in his enumeration of the things saved; no claim is made for it in the list of things lost. He speaks of his "quadrant, six charts and log-book," but a compass is not named. (See Allen's Deposition, page 10.) Nor is it named in the testimony of any of the schooner's witnesses, as being at any time the subject of observation. A striking and significant omission! considering they were testifying in a case of collision, where the claim is *adherence to their course*. Not their general course, but a certain definite and determined course. Proof of exactness of course, and steady adherence to it, is vital to such a case.

Act 29 April, 1864, Art. 18, § 20.

Captain Allen impresses us unfavorably. We find him in the same sentence swearing that the "weather was clear," and then that it "was overcast." Twice making oath to an allegation in the Libel, (see original and amended Libel,) that "the mate *discovered the steamer approaching*, but saw no lights or signals upon her;" from which we might easily infer that the steamer was seen before the collision; whereas the mate himself swears, as does also Bryant, and all the testimony shows, that the steamer was *not* seen by them until the very time of the collision. (See Rec. Libel, Art. 3, pages 2, 8, 14 and 16.) These may be venial offences in Allen, but they disturb our confidence in his general accuracy—an important consideration in a case like this! Without much reliance, therefore, in his *statement* as to the schooner's course at twelve o'clock, the night of the 28th April, two hours

what course? He replied, "*I should judge* that we were sailing at the rate of seven knots; we were sailing south by east, one-half east; *that is the usual course at that place.*" Tenth Interrogatory page 52, "What changes had been made during those two hours in the course of the Ellen Forrester?" Answer.—"There had been no change made in her course." Interrogatory 12th. How were you employed from the time that Bryant took the wheel until the time of the collision? Answer.—"I was keeping a lookont." Under such circumstances, how could he swear "there had been no change of course. He did not see the compass. There were no land marks to assist his judgment; the heavens were overcast. How could he know that such was the case? It was impossible for him to have had such knowledge as justified the oath, and his venturing so to swear without convincing the mind of the fact sought to be proved, shakes our faith in his prudence and general veracity, and leaves us where we were before.

Nor does Bryant, the man at the wheel, who is supposed to have had the compass before him, testify with any degree of satisfaction to us on this important question, He never tells us what the course of the Schooner was at any time, nor is it any where apparent that he knew, or observed her exact course. All that he says on the subject is to be found on page 17 of the Record "The mate had the wheel only a few minutes. I had no conversation with him from the time I took it until the time of collision. Not a word passed, nor was there any change in our course. He assumes that they were on the usual course and he says that was not changed. To satisfy the Court as to the exact course of the Schooner at the time when her lights were first seen by the Steamer, or at the time when it first became the Steamer's duty to change its course so as to avoid the Schooner, and to convince the Court that the latter adhered to that course up to the moment when the collision became imminent, is indispensable to the Libellants case.

It was his duty according to the repeated decisions of this Court to stand by his helm with his eye on the compass, and keep the vessel steadily on her course, and rely on the lookout for information as to the approach and bearing of the steamship.

Haney *vs* Balt. St. P. C. 23 How. 299.
The Steamboat New Jersey, Olcott, 419,
" Neptune, " 483,

Rules should be carefully followed.
18 Howard, 570, 583.
The Vanderbilt, Abbot's, 561, 564.

"The rules of navigation are obligatory upon vessels approaching each other, from the time the necessity for precaution begins, and continue to be applicable, so long as the means and opportunity to avoid the danger remain." (New York and Liverpool, U. S. Mail Steamship Co. *vs* Rumball, 21 How. 372, 384.)

And this is all the evidence they obtain from Bryant on the subject? the man of all others, from his position, most competent to speak with actual knowledge! and this too, obtained indirectly, and only on the Respondent's cross-examination! Not a word as to the Schooner's course, is said in his answers in chief! nor was he questioned in regard to it! this is strange? was it by accident or design? It is not to be supposed that the enquiry was regarded as unimportant by the Libellants? Their case hinged on it, and though they omit to make it of Bryant, they indirectly seek an answer on a re-examination of Buckminster, and thereby involve him in additional prevarication and absurdity.

Buckminster had not acquitted himself creditably on his first examination. In the mean time he seems to have given more attention to the laws of navigation—including the subject of lights, and the steering and sailing rules. His improvement is worthy of note! On his first examination he is asked page 15, whether or not he has any knowledge of the rules and regulations for fixing lights, and avoiding collisions, and if they were complied with on board the "Ellen Forrester." He anwers "I have such knowledge, and the rules were complied with:" How they were complied with, according to his observation, and accurate mode of conveying it, appears on page 13, "We had a *blue* light on the starboard fore-rigging, and on the larboard fore-rigging a *red* light." And in reply to the request made on the cross-examination to state the rules referred to, he says "The *blue light* on the starboard fore-rigging must be ten feet above deck &c. On his second examination he seems to have learned, that the lights are red and green, not red and blue; and accordingly, he then gives such to his vessel. (p. 52.) He is now asked if it would be possible for Bryant, while at the wheel, to change the Schooner's course without he, Buckminster, knowing it? His

any were very dim." He had previously said, (page 12, First Deposition,) that the weather was fair, that he could see Point Lookout light, and steamboat lights in passing, and all the other testimony in the case shows, that the Fannie's lights were in the best condition, burning brightly." And the Court is asked to credit the testimony of such a witness, who shocks all credibility, by swearing that he was on vigilant lookout, *in a position of unobstructed observation*, at the very moment when he is being run down by a steamer of the Fannie's dimensions, with all her lights aglare, without ever having noticed her approach. It is impossible! As this Court has held in similar cases, see

Peck *vs.* Sanderson, 17 How. 182, and
The Potomac, 8 Wallace, 593.

We have been led to comment thus fully, upon the testimony of these witnesses for the purpose of showing its inconsistent, contradictory and uncertain character; and we contend, that such testimony, coming from interested sources, as it does, ought not to be allowed to weigh against the steamer. Still less should it be allowed to do so, when in all its essential parts, we find, in direct conflict with it, the evidence of disinterested, unimpeached and credible witnesses, who were on board the "Fannie" at the time.

John J. Johnson, the captain of the Fannie states that she left Savannah, on the morning of the 25th April, 1868, properly equipped in every way. On the night of the collision, he retired to his room between twelve and one o'clock, leaving the deck in charge of John R. Billups, the mate, with John H. Williams, as wheelsman, and Columbus Shorter, as lookout. The night was dark, but the lights could be seen to the distance of four miles and more. They were burning brightly, when he turned in. A white light at the foremast's head, fifty feet above deck, a red light on the port side, and a green light on the starboard. Their course was then north for Smith's Point Lightship, a turning point in the bay. (Johnson's Deposition, page 29, &c.) In this he is corroborated by Billups, who further testifies, that some fifteen or twenty minutes before the collision, which occurred near two o'clock, A. M. having passed Smith's Point Lightship, and the Steamer's course being at the time, north by west, he discovered "the red light" of the Ellen Forrester, "one point on his port-bow, from three to four miles distant." Very soon after-

wards he ordered the wheel to port, and altered the "Fannie's" course "so as to give the Schooner room to pass to the westward." (Billups' Deposition, 34, 35) Some minutes elapsed after this order, when the Schooner's green light was seen, showing that she was drawing to the eastward across the Steamer's bow. (See page 37, answer to 15th cross interrogatory.) He then ordered the man at the wheel to "starboard," so as to let the schooner go to the eastward, if she wished; but, before the Steamer's course was changed, the Schooner kept off, *and seemed to be heading directly for the ship;* he then ordered the wheel "hard aport," when they came together. The blow seemed to be light; a glancing blow on their port side, and he did not think the Schooner much injured. He did not slow his engine, nor did he think the collision could have been avoided by so doing. He confirms the captain as to the character and position of the Steamer's lights when he went on deck, and says "that they were in good condition at the time of the collision."

The testimony of Billups is corroborated in every particular by that of Williams, the wheelman—as to the relative positions and bearings of the vessels when the schooner's light was first seen—their respective courses and movements—the orders given on board the "Fannie"—state of the weather—distances at which the lights could be seen, both on and from the "Fannie"—time when schooner's light was first seen by the mate, and when first reported to him by Shorter, the lookout.—the judgment and opinion of the witnesses, as experts, as to who was in fault, &c.

Shorter, the lookout, swears that "he saw the schooner's red light on steamer's port bow, about four miles distant, and reported it to the mate, Billups, who answered that he had already seen it." (Page 23 of Record.) This is correct—the mate had already seen it, and had given his first order to port the steamer's wheel; also, the subsequent order to "starboard," consequent upon the schooner's luffing to the eastward. These first orders, given by Billups in the pilot-house, to the wheelsman by his side, were naturally not heard by Shorter, who was forward on the lookout, nor did the latter notice any change in the steamer's course consequent thereon, for the reasons heretofore given why Buckminster could not justifiably swear that no change could have been made by Bryant, in the schooner's course, without his knowledge. Shorter heard no order, and noticed no change of course in the steamer, until the schooner, after luffing,

kept off to the westward, when he heard the mate cry, "Port your wheel," and saw him and Williams "do it with his own eyes."

The testimony of Shorter and Billups is again corroborated by Captain Johnson, when he states what took place on his return to the pilot-house from his room. "Between one and two o'clock," he says, (Record, page 29,) "I was awakened by a noise in the pilot-house." After being thus awakened, he heard the mate say, "starboard!" In a very short time afterwards, he heard him call, "port!" As soon as he heard this, he jumped up and ran into the pilot-house, whence he saw "two lights ahead—very close to his bow—straight ahead." He "immediately caught hold of the wheel to see if it was hard aport," and so found it; just as the mate, Williams, and Shorter have stated. He then "hallooed to the persons in charge of the schooner, to hard aport, seized the bell-puller, to stop the ship; but had not time to do so before the collision." Captain Johnson did not hear the first order to port, any more than did Shorter. He was then doubtlessly asleep, but after awakening, he heard the order, "starboard," (which Shorter did not hear, for the reasons before stated;) and immediately thereafter the order, "port;" thus corroborating the statements of the others more effectively, perhaps, than if he had agreed with them in all they said.

These witnesses are all skillful and experienced mariners, familiar with the management of steamers and propellers, on the Chesapeake bay. Shorter swears that "in his judgment the collision was caused by the misconduct of those in charge of the schooner, had she not have luffed, from the respective course of the two vessels, they would have passed each other in safety." (Record page 24.)

Williams expresses a like opinion and says on page 21, of record. "I am positive and sure the schooner changed her course as described;" and adds on page 22, "what I have said of the movements of the vessels and all about it, was from my own actual observation. I saw every movement of the vessel and the steamer while I was at the wheel." His opinion was objected to by the Appellees, but was made evidence by them on the cross-examination, when in reply to their enquiry "wherein the Schooner was in fault?" He answers as reported on page 21 of Record.

If the cause stood solely on the testimony of the Libellants' witnesses, we should not feel justified, as before stated, in drawing

from it the conclusions necessary to their case. The witnesses speak indeed of the schooner's course, but in a vague and unsatisfactory way, and our reliance on their testimony is destroyed by the manifest contradictions and inconsistencies to be found in it, and by declarations, the falsity of which must have been within their knowledge, and has been completely established by proof. "It has been said," say this Court in the case of the Santissima Trinidad, (7 Wh. 339,) "that if witnesses concur in proof of a material fact, they ought to be believed in respect to that fact, whatever may be the other contradictions in their testimony. *That proposition may be true under circumstances, but it is a doctrine which can be received only under many qualifications, and with great caution.*" But, when there exist such contradictions in their own testimony, and such concurrence in regard to the schooner's course, is met, and contradicted by other credible, consistent and disinterested testimony, the latter is entitled to precedence in credit, and must be received as the truth. We do not desire, nor is it necessary, that we should charge the Libellants' witnesses with willful and direct perjury; at the same time, we find it impossible to reconcile their statements with good faith and probability. "When a party speaks of a fact in respect to which he cannot be presumed liable to mistake, if the fact turn out otherwise, it is extremely difficult to exempt him from the charge of deliberate falsehood, and courts of justice, under such circumstances, are bound upon principles of law, and morality, and justice, to apply the maxim "*falsus in uno, falsus in omnibus.*" What ground of judicial belief can there be left, when the party has shown such gross insensibility to the difference between right and wrong, between truth and falsehood?

The Santissima Trinidad, 7 Wh. 339.

The contradictions in the testimony of the Libellants have been exposed, and they are so numerous that in ordinary cases no Court could venture to rely on it without danger of being betrayed into the grossest errors. What confidence can be placed in the testimony of witnesses who swear as do Buckminster and Bryant, (pp. 15, 54 and 16 of Rec.) that there was no obstacle to prevent their seeing forward, when it is proven by themselves that the schooner had all her sails set. That the Fannie had no lights, when the fact was glaringly otherwise. "I saw no lights on the steamer before or at the time of the collision; she had no side

lights burning at the time." (Bryant's Deps. p. 16.) To speak with the least possible harshness of their testimony, it is clouded with doubt and suspicion, which doubt and suspicion are confirmed into entire disbelief, when we find it contradicted as it is, by all the other evidence in the cause.

The Appellants witnesses appear in a very different light! Every material fact, that has been testified to by any one of them, has been concurred in by all the rest; and no where have they been contradicted by any direct testimony on the other side. Is it doubted that the Steamer had her proper lights in their proper places? Is it doubted, that she kept good lookout? Is it doubted, that some fifteen or twenty minutes before the collision, she discovered, one point on her starboard bow, some three or four miles off, the red light of the Schooner? Seeing this red light—required by the law to be in the forward port-rigging, even as a green light is required to be in the starboard fore-rigging, those in charge of the Steamer were told by it, that it belonged to a vessel, whose course was to the southward or westward; (see Billups' Deposition, pages 35, and 36,) they inferred it was to the southward, and correctly; for it is conceded, that the Schooner's course was the usual one down the bay, S. by E. half E; four miles off, one point on the Steamer's port-bow, would have placed the Schooner at a point in longitude over one and a half miles to the westward of the then position and course of the Steamer. This afforded ample room for passing, as we will hereafter have occasion to demonstrate; but, nevertheless, the Steamer's helm was ported, so as to give the Schooner a wider way. There was surely no error in this, but, a fulfillment of duty, rather. "When he ascertained the course of the Schooner," says the Supreme Court, in the case of Peck *vs.* Sanderson, "if there was sufficient room to enable him to have avoided her, it was unquestionably his duty to change his course, and allow the Schooner to pass on the course she was steering."

Peck *vs.* Sanderson, 17 How. 181.

Subsequently, both the lights of the Schooner were revealed; and, very shortly thereafter, the red light was shut out, and the green light only remained in view; (Billups' Deposition, page 37,) showing that the Schooner had changed her course more to the eastward, and was drawing across that of the Steamer; (this

movement is spoken of by the witnesses, as "luffing;") they were then within about a mile of each other. (See Williams' and Shorter's Depositions, pages 20, 24 and 25, of Record.) Billups' says, "it was some few—some seven to ten minutes after they first saw the red light;" and, as they were four miles apart, when that was first seen, and were approaching at the combined speed of sixteen knots an hour, or at the rate of a mile in three and three-quarter minutes, this would bring them within the same distance, say a mile of each other, as stated. (Deposition, pages 36 and 37.*) By this movement the Schooner violated the law, which should have held her to her former course, "south-east by east," and by such violation made the subsequent collision possible. Yet even then, at the distance they were apart, if the Schooner had held steadily to her newly taken course, the order, which was given aboard the Steamer "to starboard," would have resulted successfully, had not the Schooner fallen away from the wind, at the moment she did, and heedless of Captain Johnson's cry to "port her wheel," dashed blindly, against the port-bow of the Steamer. This is the concurrent testimony of all on board the "Fannie," and, as this Court has said, in the case last referred to, "there is no reasonable ground for doubting the truth of this testimony; they are facts proved by eye witnesses whose testimony is not impeached."

Peck *vs.* Sanderson, 17 How. 181.

That the preponderance of evidence in the case is in favor of the Appellants, we cannot entertain a doubt, both as to its intrinsic weight, and as to the number of witnesses testifying. Two were on the Schooner's deck, at the time of the collision, on that of the Steamer, three. In addition to the greater respect to which the latter is entitled, growing out of the concurrence of the greater

*NOTE.—There is perhaps, some little confusion or discrepancy, in Billups' testimony, as reported on page 37 of Record, in regard to the times and distances inquired of, possibly the result of temporary embarassment, or misunderstanding of the cross-questions, and confounding the time of the first and second order "to port" spoken of in the testimony. But be this as it may, this Court has repeatedly held that, "inaccuracy about distances on the water, and errors in computation of time, furnish no reason for discrediting testimony which in other respects is reliable." (1 Parsons, Ship. and Ad. 537, 538, Abbott's R. 366. Olcott, 136, 306. The Carroll, 8 Wallace, 304.) It is a coincidence worthy of note, that while Williams and Shorter seem to have judged the distance of the Schooner by the eye, Billups arrives at the same result, computing by time.

number, due consideration should be paid to the probabilities of the case. Whom do they support?

Take an ordinary compass card, and attach it to a blank sheet of paper; by means of a parallel ruler, draw to the right of the card a straight line north by west, to indicate the course of the Steamer; adopt a scale of miles, proportioned to the size of your paper; on the line drawn, select a point, to indicate the position of the Steamer, when the Schooner's red light was first seen; four miles distant from this point, and one point to the westward of the line indicating the Steamer's course, (or, one point on the Steamer's port-bow, as the witnesses express it,) ascertain a second point; this second point will indicate the position of the Schooner when first seen. Through this last, or second point, draw a line south by east one-half east, and you will have the Schooner's course—Extend this last line, and you will see, that the course of the Schooner intersects obliquely the wake of the Steamer, some four miles south of the position she was in when she first saw the Schooner's red light.—Thus mathematically demonstrating the impossibility of a collision had the vessels held their respective courses. And this is equally true, whether they were one mile apart or five miles apart, provided their bearings were as stated.

The Schoomer, when her red light was first seen by the Steamer, was one point on the latter's port bow, distant four miles—The Steamer was steering "north by west"—speed nine miles per hour.

The Schooner was steering south by east one-half east—Speed seven miles per hour.

The steamer had to run $2\frac{1}{4}$ miles, and the schooner $1\frac{3}{4}$ miles to reach the passing point on their respectice courses.

$$\frac{(9 \times 4)}{16} = 2.25 \qquad \frac{(7 \times 4)}{16} = 1.75$$

The time required to pass each other at those rates would be fifteen minutes.

$$\frac{(60 \times 2.25)}{9} = 15 \qquad \frac{(60 \times 1.75)}{7} = 15$$

Had both vessels maintained their respective courses, they would have passed each other at a distance of $\frac{5}{8}$ of a mile between.

To collide with the schooner, assuming that she held her course, the steamer would have had to vary hers one and a half points to the westward from the moment when she first perceived the schooner's red light, with the necessity of a rapidly increasing variance the longer it was delayed, and the nearer the vessels approached the passing point. To have uncovered both lights of the schooner, and then to lose sight of the red or port light, and to see the green or starboard light only, she would have had to run to the westward of the schooner, and then, in order to collide with her on the port bow, as the witnesses on both sides swear she did, she would, by rounding to, or by some other manouvre, have been compelled to go to the eastward again, and approach her on the port bow. The steamer, after having crossed to the westward of the schooner's course, "south by east, one-half east," could by no possibility have struck her on the port side by porting her wheel, or by any other simple movement; she might have struck her on her starboard side, but never on her port; unless the schooner herself ported; which she swears she did not, and of which there is no evidence. There was no necessity or occasion whatever for the steamer to go thus to the westward. It was contrary to a general rule, well known to mariners—That "when the vessel which is bound to give way, sees a light ahead on her port bow, the helm should be put to port; but, if on the starboard bow, the helm should be put to starboard. Because following this rule requires, comparatively, but a slight change in the vessels course; otherwise a much greater change."

1 Parson's Sh. & Ad. 593, note 4, commencing on p. 592.

Such a course if held for a few minutes only, would have put her ashore; and the angle that she would have been compelled to make in order to resume the usual up bay course, would have uselessly prolonged her voyage. These considerations render such a supposition altogether improbable. If the lights of the schooner "Ellen Forrester" disclosed themselves, as those on board the "Fannie" swear they did, she must have changed her course. These witnesses have no interest in the result, they profess to speak from actual observation, they cannot very well be mistaken in regard to the schooner's lights, and certainly not, so far as the movements and orders of their own vessel were concerned. "Unless, therefore, they have willfully stated what they know to be false, *which is not to be presumed*, their statements

must be correct," (The N. Y. & Liverpool M. St. Sh. Co. vs. Rumbull, 21st Howard, 381–383, &c.) and the schooner must have been in fault.

"One of the rules of navigation requires the steamer to keep out of the way of the sailing vessel; but to enable her to do this effectively, the law imposes the corresponding obligation on the sailing vessel to keep her course. If therefore the steamer adopts proper measures of precaution to avoid a collision, which would have been effective if the schooner had not changed her course, the former is not chargeable for the consequences. Any other rule would condemn the steamer, no matter how gross the misconduct of the sailing vessel."

The Potomac, 8 Wallace, 592.

"The laws of navigation, impose no general duties or liabilities on steamers, in relation to collisions with sailing vessels, not common between themselves, and to that class of vessels also: each is bound under all circumstances, to use with reasonable promptitude and skill, all the means in their power to avoid a threatened collision. The vessel under sail must contribute to the common security, *by holding steadily to her course*, or take positive measures, if any are within her power, to prevent a collision, and avoid counteracting or embarrassing the Steamer in the use of her power to that end. The owners of Steamers are not to be made insurers against the negligence or misconduct of those in charge of sailing vessels. If a collision occur through the inattention, want of skill or blameable conduct of the latter, which the Steamer in the use of reasonable endeavors could not avoid, the consequence must fall upon the vessel in the wrong, the same as if both vessels were of the same description. To the owners of sailing vessels, in actions against Steamers, it is indispensably necessary to prove ordinary care and skill, on their part and negligence or wilful fault, on the part of the steamboat."

The Steamboat New Jersey, Olcott, 419, 420.
" Neptune, " 483.
The Relief, Olcott, 104.

"The highest degree of caution that can be used, is not required of the steamboat; it is enough that it is reasonable under the circumstances."

The Grace Girdler, 7 Wallace, 206

It was further contended, on the part of the Libellants, "that the Steamer ought, under the circumstances of the case, to have reversed her engine, and stopped;" and they invoked the aid of the 16th Article of the Act of 1864.

"*Article 16th.*—Every steamship, when approaching another ship, so as to involve risk of collision, shall slacken speed; or, if necessary, stop and reverse; and every steamship shall, when in a fog, go at moderate speed."

This Article must be construed in connection with the other rules, and prevailing laws of the sea.

The Statute is not designed to alter, or change the ordinary rules of navigation as they existed before its passage. "It is affirmative of those rules;" (1 Parson's Sh. & Ad. 593;) and the paramount law of the sea requires reasonable care, and skill, of all persons navigating its waters. The Statute defines in some particulars what measures of precaution are to be observed; and whether or not these particular measures, or any of them, are to be adopted, depends upon the circumstances of each particular case; and the measures prescribed are no more, or otherwise obligatory, than others, which are authorized by the ur
those, for instance, which declare that competent per
employed on the lookout, and at the wheel, and the
collision happens, the question always is, by whose
negligence is proved, did it cause or *contribute* to the collision.

Kelly *vs.* Thompson, U. S. Dist. Ct. for Mass., cited in 1 Parsons' Sh. & Ad. 597, n. 2.

This view is directly sustained by the 19th and 20th Articles, themselves.

"*Article 19th.*—In obeying and construing these rules, due regard must be had to all dangers of navigation, and due regard must also be had to any special circumstances which may exist in any particular case, rendering a departure from the above rules necessary, in order to save immediate danger.

"*Article 20th.*—Nothing in these rules shall exonerate a
or the owner, or master, or crew thereof, from the conseq
any neglect to carry lights, or signals, or of any neglect

a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

And now, having due regard to the special circumstances, it is contended that the 16th Article does not apply to this case.

There is no evidence from the Appellees as to the bearings, or relative position of the two vessels, at any time before the collision. We are compelled, therefore, to rely, as to that matter, upon the unimpeached testimony of the Appellants; and the argument on the other side loses sight of the facts proved by them, that when first seen, the schooner was to the westward of the steamer, some three or four miles off, one point on her port bow, steering, as conceded, south by east one-half east; that the steamer, having only a short time before rounded Smith's Point light ship, was necessarily far to the east of the schooner, steering north by west, (see Chart of the Bay); that those in charge of her had then no reason to suppose that there was danger of collision, or any reason why she should stop, reverse her engine, or slacken her ordinary speed; that there was still less reason so to suppose, after the order was given to port her wheel and leave more room to the schooner to pass on her course! (see Williams' Dep. 18 and 21, and Billings', 34 and 35 of Record.) That those in charge of the steamer had a right to presume, and indeed were bound to presume that the schooner would hold steadily to the course she was on, and that the steamer had shaped her course to keep out of her way, and to let her pass at a perfectly safe distance. There was surely no obligation upon the steamer to stop or slow her engine at this time. Nor was there any obligation upon her to do so when subsequently the opening of the schooner's green light showed that she had changed her course, and was heading across that of the steamer. The vessels were still, according to the evidence, a mile apart, with ample time to let the schooner pass in her newly taken course to the eastward, and plenty of sea-room to permit the steamer, by starboarding her helm, to pass under the former's stern to the westward. This she would have done, had the schooner seen her, and steadily held to her new course. It was again, as before, the right and duty of those in charge of the steamer to presume that she would so do, and there was no more reason now, than at first, why they should stop or slacken their speed, unless a steamer is bound so to do,

whenever she sees a sailing vessel approaching within a mile of her. Such a rule would greatly impair their efficiency, and tend to drive them from the paths of commerce. The evidence certainly shows, that up to this moment, those in charge of the steamer exercised proper presence of mind, care and precaution, and were unembarrassed by any doubts as to what their duty required them to do.

"Sailing vessels, when approaching a steamer, are required to keep their course; and steamers under such circumstances, as a general rule, are required to keep out of the way. Many considerations concur to show that all those engaged in navigating vessels upon the seas are bound to observe the nautical rules recognized and approved by the Courts, in the management of their vessels, on approaching a point where there is danger of collission. Those rules were framed and are administered to prevent such disasters, and to afford security to life and property exposed to such dangers; and public policy, as well as the best interest of all concerned, requires that they should be constantly and rigidly enforced in all cases to which they apply. Few cases can be imagined where it is more needful that they should be observed than when a steamer and a sailing vessel are approaching each other from opposite directions, or on intersecting lines, for the obvious reason that the negligence of the one is liable to baffle the vigilance of the other; and if one of the vessels, under such circumstances, follows the rule, and the other omits to do so, or violates it, a collision is almost certain to follow. Rules of navigation, such as have been mentioned, are obligatory upon vessels approaching each other, from the time the necessity for precaution begins, and continue to be applicable as the vessels advance, so long as the means and opportunity to avoid danger remain.

"They do not apply to a vessel required to keep her course after the approach is so near that the collission is inevitable, and are equally inapplicable to vessels of every description, while they are yet so distant from each other that measures of precaution have not become necessary to avoid a collision.

"Sailing vessels approaching a Steamer, are required to keep their course on account of the correlative duty which is devolved upon the Steamer, to keep out of the way, in order that the Steamer may know, the position of the object to be avoided, and may not be led into error, in her endeavor to comply with the requirement. Under the rule that a Steamer must keep out of

a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

And now, having due regard to the special circumstances, it is contended that the 16th Article does not apply to this case.

There is no evidence from the Appellees as to the bearings, or relative position of the two vessels, at any time before the collision. We are compelled, therefore, to rely, as to that matter, upon the unimpeached testimony of the Appellants; and the argument on the other side loses sight of the facts proved by them, that when first seen, the schooner was to the westward of the steamer, some three or four miles off, one point on her port bow, steering, as conceded, south by east one-half east; that the steamer, having only a short time before rounded Smith's Point light ship, was necessarily far to the east of the schooner, steering north by west, (see Chart of the Bay); that those in charge of her had then no reason to suppose that there was danger of collision, or any reason why she should stop, reverse her engine, or slacken her ordinary speed; that there was still less reason so to suppose, after the order was given to port her wheel and leave more room to the schooner to pass on her course! (see Williams' Dep. 18 and 21, and Billings', 34 and 35 of Record.) That those in charge of the steamer had a right to presume, and indeed were bound to presume that the schooner would hold steadily to the course she was on, and that the steamer had shaped her course to keep out of her way, and to let her pass at a perfectly safe distance. There was surely no obligation upon the steamer to stop or slow her engine at this time. Nor was there any obligation upon her to do so when subsequently the opening of the schooner's green light showed that she had changed her course, and was heading across that of the steamer. The vessels were still, according to the evidence, a mile apart, with ample time to let the schooner pass in her newly taken course to the eastward, and plenty of sea-room to permit the steamer, by starboarding her helm, to pass under the former's stern to the westward. This she would have done, had the schooner seen her, and steadily held to her new course. It was again, as before, the right and duty of those in charge of the steamer to presume that she would so do, and there was no more reason now, than at first, why they should stop or slacken their speed, unless a steamer is bound so to do,

whenever she sees a sailing vessel approaching within a mile of her. Such a rule would greatly impair their efficiency, and tend to drive them from the paths of commerce. The evidence certainly shows, that up to this moment, those in charge of the steamer exercised proper presence of mind, care and precaution, and were unembarrassed by any doubts as to what their duty required them to do.

"Sailing vessels, when approaching a steamer, are required to keep their course; and steamers under such circumstances, as a general rule, are required to keep out of the way. Many considerations concur to show that all those engaged in navigating vessels upon the seas are bound to observe the nautical rules recognized and approved by the Courts, in the management of their vessels, on approaching a point where there is danger of collission. Those rules were framed and are administered to prevent such disasters, and to afford security to life and property exposed to such dangers; and public policy, as well as the best interest of all concerned, requires that they should be constantly and rigidly enforced in all cases to which they apply. Few cases can be imagined where it is more needful that they should be observed than when a steamer and a sailing vessel are approaching each other from opposite directions, or on intersecting lines, for the obvious reason that the negligence of the one is liable to baffle the vigilance of the other; and if one of the vessels, under such circumstances, follows the rule, and the other omits to do so, or violates it, a collision is almost certain to follow. Rules of navigation, such as have been mentioned, are obligatory upon vessels approaching each other, from the time the necessity for precaution begins, and continue to be applicable as the vessels advance, so long as the means and opportunity to avoid danger remain.

"They do not apply to a vessel required to keep her course after the approach is so near that the collission is inevitable, and are equally inapplicable to vessels of every description, while they are yet so distant from each other that measures of precaution have not become necessary to avoid a collision.

"Sailing vessels approaching a Steamer, are required to keep their course on account of the correlative duty which is devolved upon the Steamer, to keep out of the way, in order that the Steamer may know, the position of the object to be avoided, and may not be led into error, in her endeavor to comply with the requirement. Under the rule that a Steamer must keep out of

the way, she must of necessity, determine for herself, and upon her own responsibility independently of the sailing vessel, whether it is safer to go the right or left, or to stop, and in order that she may not be deprived of the means of determining the matter wisely, and that she may not be defeated or baffled, in the attempt to perform her duty in the emergency, it is required in the Admiralty Jurisprudence of the United States, that the sailing vessel shall keep her course, and allow the Steamer to pass either on the right or left, or to adopt such measures of precaution as she may deem best suited, to enable her to perform her duty, and fulfil the requirement of the law.

The New York and Liv. U. S. Mail St. Sh. Co. *vs.* Rumball, 21 Howard, 384.

The Fairbanks, 9 Wallace, 422.

The law presumes, and indeed requires intelligence and vigilance on both sides, and will not excuse, protect, or tolerate recklessness and blind indifference. Those in charge of the Schooner were under a legal obligation to see the Steamer, to note her bearings, and to hold their course intelligently, and with care and constant reference thereto, and this is true of her original course, as well as that which she was upon when she changed to the eastward; and if they were faulty in either, and the collision can in any way, either wholly, or partially, be attributed to such fault, they must bear the consequences; provided, reasonable care and caution, is shown to have been exercised on board the Steamer; of which, if her testimony is believed, there can be no doubt.

The Neptune, Olcott, 191 to 196.

The Grace Girdler, 7 Wallace, 206.

After the order to starboard, had been given on board the Steamer, and as she was responding thereto, the Schooner fell off from the wind, and "headed directly for the Ship!" (Billups' Deposition, page 35 of Record.) "After getting in the pilot house, I saw two lights ahead, very close to our bow, straight ahead," says Captain Johnson. (Deposition, Record page 29.) "By this time, they were in a line with each other," says Williams. (Deposition, page 18 and 19.) "They struck head and head on, like two negroes butting," says Bryant the Libellant's own witness. (Deposition, page 17.) It was now too late to stop or slow the Steamer. (See Billups' Deposition, page 38.)

The Schooner by her own wrong, was right upon them; the best possible thing to do, was to port the Steamer's wheel, and try and avoid the Schooner. This was instantly done—with what effect, the Court is informed.

It can not to be contended that the Steamer was called upon to stop, unless the peril was imminent, or, in the language of the 16th Article itself, unless there was a "necessity" for her so doing; then the inquiry is, which boat is to blame for producing the peril, the necessity? Upon the theory of the Appellants, the Schooner, certainly. She changed her course; this produced the peril. She therefore is to blame.

The Carroll, 8 Wallace, 305.

It might be questioned, whether or not the 16th Article is generally applicable to cases of collision occurring upon the high seas, or on waters where the vessels have plenty of sea room? In examining the cases in which the rule has been enforced we find them mostly such as have happened in harbors, or narrow channels, or in cases of uncertainty; as when the Steamer is approaching an object in the night, and is uncertain what it is; or when a vessel is seen but her course is doubtful.

See the Steamer Louisiana *vs.* Schooner Fisher, 21 Howard, 5, and cases cited on page 6, viz: 3 W. Robinson, 75; 2 W. Robinson, 271; 1 Parsons' Sh. & Ad. 557, note 4—all cases of uncertainty. The Genesee Chief, 12 How. 463—narrow channel.

It is not seen in what respect the Steamer was in fault.

The Potomac, 8 Wallace, 590.

It is contended lastly—That the Schooner was in fault, by reason of the carelessness and negligence of those having her in charge; and for want of a vigilant, and proper lookout.

In regard to carelessness and negligence, and the insufficiency of the lookout, there can surely be no more convincing proof than that which is contained in the simple fact that the vessels came

in collision without those on the Ellen Forrester being aware of the Steamer's approach. That the Fannie's lights were brightly burning, there can be no question. That they should not have been seen from the Ellen Forrester, had proper care and due vigilance been exercised, the ordinary care and vigilance which the law exacts of all who navigate the water, is simply impossible. In the case of Peck *vs.* Sanderson, 17 How. 182; 21 Curtis' Dec. S. Ct. 443,) this Honorable Court, denouncing the not seeing the Steamer's light as a great negligence, says:

"It is impossible that a vessel lighted up as the Steamer was should not have been seen by the Schooner had the latter maintained ordinary care and watchfulness." And in the case of the Potomac it uses language to the same effect. "If the persons on board the Steamer were watchful, it was not the case of those in control of the Schooner, for if they had been equally attentive to their business, they would not have allowed the Steamer to have approached within a half mile without being seen by them." 8 How. 593.

In Article 4 of the Libel it is alleged that "the lights of the Schooner could easily have been seen from the Steamer, and must have been seen at a considerable distance had she kept a good lookout," thus by their own admission showing that, by parity of reasoning, no good lookout was kept on board the Schooner, for she never saw the Steamer's lights at all.

Buckminster, on page 14 of the Record, says: "I did not see the Steamer until the moment of collision." Bryant, page 16, says: "I did not see any lights before or at the time of the collision, nor did I see the Steamer," as has already been shown in discussing the credibility of these witnesses. The late Chief Justice, in the case of Haney *vs.* Balto. St. Packet Co., in stating the principles and rules of navigation as recognized and maintained by this Court, says: "It is the duty of each vessel to have a lookout, acquainted with his duty, and faithfully discharging it, and stationed at that part of the vessel which will best enable him to see any impending danger, and promptly warn the helmsman of the point from which it is approaching." 23 How. 295; see also 1 Parsons' on Sh. & Ad. 576, note 7; see also Whitridge *vs.* Dill, 23 How. 453.

The Schooner was also in fault, in not having her lookout stationed in the proper place. Buckminster was stationed on the starbord quarter, near the main rigging; see Dep. pp. 25 and 54.

All the Schooner's sails were set and trimmed to that side, as has been shown in an earlier part of this argument. The proper position for a lookout has frequently been determined by this Court.

"The position of a lookout should be forward, it should not be where sails obstruct the view." Peck *vs.* Sanderson, 17 How. 177. In sailing vessels it is uniformly at the bow, otherwise the sails would obstruct the view." Opinion of Chief Justice Taney, Haney *vs.* Balto. St. Packet Co., 23 How. 303; The Fairbanks, 9 Wallace, 423.

"It is justly regarded by maritime courts a delinquency in a vessel which fails to keep a competent lookout properly stationed, that renders her responsible for the consequences of collision, unless the clearest proof is made that the omission was in no way the cause of the disaster. And the burthen is on the Libellant to make this proof," 1 Parsons' Sh. & Ad. 595 and 596; the Grace Girdler, 7 Wallace, 203. The earlier and modern cases concur in this doctrine, and establish the maintenance of an adequate lookout as a necessary measure of precaution, the neglect of which casts the responsibility for accidents on the delinquent vessel and her owners. The Chester, 3 Hagg. 316; the Diana, 1 W. Rob. 131; the brig Emily, Olcott's R. 137 and 138; the pilot boat Blossom, Olcott, 194.

It is our duty in this, as in all cases, to reconcile conflicting testimony as well as we can, without attributing to either party, if it can be avoided, wilful and direct perjury. With this principle before us we can explain the Appellee's case only upon the following theory.

The "Ellen Forrester" had left Baltimore about 10 o'clock on the morning of the 28th April, 1868, and on the following morning, between 1 and 2 o'clock, was pursuing her voyage down the Chesapeake bay, before a seven knot north-easterly breeze, with all her sails set and trimmed to the starboard, when her red light was first seen by the steamer. Her course had been, and was at the time, the usual one for vessels on similar voyages. It was in the spring time, the weather was a little overcast, but not dark or stormy; the lights of vessels in passing were visible several miles away; "nothing had occurred of any importance," nothing to excite particular watchfulness or apprehension, and they were sailing along in listless security, paying no particular attention to approaching objects, or to the movements of their own vessel,

otherwise than to keep her on the general course down the bay. All the evidence offered by the Libellants as to her course shows this, and nothing more; and this general course is sufficient for ordinary purposes; but is very different from, and altogether inadequate to the maintenance of that steady course required by the law, when "sailing vessels and steamers are approaching each other, in such directions as to involve risk of collision." Now every one, who has the least familiarity with seamanship, knows the strong and constant tendency of vessels, particularly fore and aft rigged vessels, such as schooners, &c., when sailing on ~~a~~ before the wind, to luff or edge up to the windward of their courses; to counteract which tendency, the helm of the vessel has to be kept more or less to the windward, dependent upon the varying strength of the wind and the course the vessel desires to pursue. The Court is familiar with the phrase "a weather helm."

Hence it is, that unless the utmost and most constant vigilance is preserved by the man at the wheel, the vessel is constantly yawing about, first to the right and then to the left, it may be several points, as she luffs in obedience to the tendency spoken of, and then is made to fall to leeward again in order to resume her general course. In this way, seen from an approaching vessel, she would appear precisely as the Ellen Forrester appeared to those in charge of the steamer, alternately shutting out and revealing her red and green lights, or showing some times both as she swung off and on, and presenting the appearance of a vessel changing her course, first to the westward and then to the eastward, and back again, as the case might be; the time of her continuance upon each course, and the distance run, depending upon the negligence or attention of the wheelsman or officer in charge.

The Libellants proved by Billups, on cross-examination, (Record, p. 37,) that at three miles distance from the steamer, either of the schooner's two lights would be shut out or disclosed by a variance of her course two points either way.

And thus it may have been with the "Ellen Forrester"! There was no intentional, perhaps, no conscious change of course; but by the carelessness of those having her in charge, and the pressure of the north-eastern wind on her heavy stern sails, she was alternately luffing to the eastward across the steamer's bows, and falling off to the westward again in resumption of her course, and thus "put herself carelessly in the way of the former, and ren-

dered ineffectual her movements to give her sufficient berth." (The Potomac, 8 Wal. 590) If she had kept adequate lookout, if she had seen the steamer, if she had held steadily to her course, the collision would not have occurred.

By the words "keep her course," as found in the 18th Article of the rules of navigation, is meant, as heretofore stated, an intelligent keeping of a steady and certain course ; a "keeping" in accordance with the requirements of the 19th Article of the Act, a keeping, "with due regard to all dangers of navigation, and due regard to any special circumstances which may exist in any particular case, rendering a departure from the above rules necessary, in order to save immediate danger." (See 19th Article.) This necessarily involves vigilance, and a lookout adequate to the occassion. How otherwise, can "her course be kept" *with due regard* to the circumstances referred to? And how otherwise is it to be known when the special circumstances exist, and when they render a departure from the rules necessary? Therefore, under the Rules of Navigation, whenever a sailing vessel is required to keep her course, a proper lookout, is an indispensable accompaniment, and under the 19th Article, nothing in the Rules requiring the Steamer to keep out of the way, to slacken her speed, or to stop, shall exonerate the sailing vessel from the consequences, arising from the neglect of any precaution, which would enable her to know when the special circumstances referred to exist, and when a departure from the rule is necessary.

Now, assuming, for the sake of the argument, that the "Ellen Forrester" had kept her course, and that the Steamer was in fault for not avoiding her, or for not stopping, yet, if by porting the Schooner's helm, when called on by Captain Johnson, so to do, just before the collision, she could have avoided it, and she was unable so to do, because she was unaware of the Steamer's approach by reason of the inadequacy of her lookout: then, she must also be considered in fault by reason of such inadequacy.

This is the logical conclusion, drawn from the rules when construed together.

Analogous to this, is the view taken by this Court, in the case of the Grace Girdler, 7 Wallace, 203.

"The 17th Article does, as suggested, provide that every vessel overtaking another vessel, shall keep out of the way of the said last mentioned vessel. But the 18th Article provides, subject

to certain qualifications, that the other vessel shall keep her course; while the 19th and 20th, provide that due regard shall be had to the circumstances, which may render a departure from the rules prescribed necessary, in order to avoid immediate danger, and that nothing in the Act, shall warrant the neglect of any proper precaution, or excuse the fault of bad seamanship, under any circumstances that may occur."

Again. When a steamer and sailing vessel are approaching each other in dangerous proximity, it is not, in ordinary circumstances, the duty of the sailing vessel to give way to the Steamer; but it is her right and duty to maintain her course.

But if there are special circumstances from which it clearly appears that the sailing vessel can prevent a collision otherwise inevitable, by a departure from her course, she is bound to make it.

The Vanderbilt, Abbott, 363 and 366.
N. Y. & Liv. M. S. Ship Co. *vs.* Rumball, 21 How. 385.
Crockett *vs.* Newton, 18 How. 581 and 583.
1 Parsons' Sh. & Ad. 581, n. 2.

It follows as a corollary that the sailing vessel should be kept in such condition as to lookout, &c., as to enable her to see and note such special circumstances in order to be able to act, and she is necessarily in default if she is not in such condition when the danger approaches.

"There is one prevailing principle, devised to prevent the collision of ships. It is this:

"That it is the duty of persons entrusted with the navigation of vessels of whatever description, a duty enjoined by law as well as humanity, to avoid collision with other vessels, if possible. It follows as a corollary from this obligation that no navigator is bound or has a right pertinaciously to adhere to a rule of the sea, when he would incur the danger or increase the probability of a collision by so doing. If he clearly foresees that disastrous consequences are likely to ensue from such a course, having power to avoid them, he is bound to exert that power."

1 Conkling U. S. Ad. 410, 411 and 412.
The Commerce, 9 En. Ad. R. 288.
Crockett *vs.* Newton, 18 How. 581.

And if by negligence, or want of ordinary vigilance, he fails to see or foresee the danger, he is in default therefor.

The Schooner was therefore in default for not seeing the approach of the Steamer, and for not porting her wheel and making an endeavor to avoid her when the collision became imminent.

RULES CONCERNING LOSS RECAPITULATED.

1st. The party in default must suffer his own loss, and compensate the other party for what loss he may sustain.

2d. If neither be in fault the loss rests where it falls.

3d. If both are in fault it shall be divided between them.

4th. If there is reasonable doubt as to which is in fault, the loss rests where it falls.

5th. In cases of inscrutable fault, or where there is fault somewhere, but it is impossible to tell where, the loss rests where it falls.

See Cases cited on page 5 of this Brief.

For a full exposition of the law in collision cases, and its requirements in regard to a lookout, see the opinion of Chief Justice Taney, in the case of Haney *vs.* The Baltimore Steam Packet Co. 23 How. 294.

The majority of the Court differed with the Chief Justice in construing the facts of that case, but I am not aware that the general rules and principles of law, as laid down by the latter, have ever been controverted. The importance of a vigilant lookout at all times, particularly at night, cannot be over-estimated; and sailing vessels, as well as steamers, ought to be held therefor to the strictest account. "Even handed justice requires that the law of navigation should be equally obligatory upon both." And where the evidence shows, as we think it does, that the "Fannie" performed her duty, and took proper measures to keep out of the way, and her efforts were counteracted by the sailing vessel, and a collision forced upon the steamer, by the incapacity and negligence of those in charge of the "Ellen Forrester," we can not think that the steamer should be charged with any part of the damage, which the sailing vessel brought upon herself. Those whose wrong, carelessness and indifference to their duty produced the disaster, have no claim to be remunerated for the loss.

The question was asked, (page 52 of Record,) if the steamer stopped or slackened her speed after the collision? And on page 53, if she gave any signal, rang a bell or blew a whistle, before the collision? The evidence shows that she did slacken her speed after the collision, but the blow being a glancing blow, and no great concussion or shock being produced thereby, those in charge of the steamer had no idea of the extent of the damage done to the schooner, and hearing no call for assistance, proceeded on their course. See Rule 24, 25, 28, 31, 36

In regard to ringing a bell and blowing the steam whistle, they are acts applicable only to cases between steamers, and are not applicable to cases such as the present.

1 Parsons' Sh. & Ad. 558 and 559, and case of Western Metropolis, cited in note 1.

ANDW. STERETT RIDGELY,
Proctor for Appellants.

Supreme Court

OF THE UNITED STATES.

STEAMSHIP "FANNIE" AND OWNERS

vs.

SCHOONER "ELLEN FORRESTER" AND OWNERS.

APPELLEES' BRIEF.

HENRY STOCKBRIDGE,

Counsel for Appellees.

BALTIMORE:
PRINTED BY HANZSCHE AND COMPANY.
LIGHT AND BALTIMORE STREETS.

1871.

STEAMSHIP "FANNIE" AND OWNERS *vs.* SCHOONER "ELLEN FORRESTER" AND OWNERS.	IN THE **Supreme Court** OF THE *UNITED STATES.* *Dec. Term* 1870.—*No.* 108.

APPELLEES' BRIEF.

This is a cause of collision between the Steamship "Fannie," and the Schooner "Ellen Forrester."

The libel was filed in the District Court of Maryland, by the owners of the "Ellen Forrester," on the 30th day of April, 1868.

The District Court decreed in favor of the libellants, and awarded them $10,365 00 for their damages. Record p. 27.

The respondents appealed to the Circuit Court, and the Circuit Court, Ch. J. Chase, decreed in favor of the libellants, and awarded them $10,465 00 with interest and costs. Record p. 60.

From that decree the respondents have appealed to this Court.

The Facts out of which the action arises are as follows:

On the 28th day of April, 1868, the "Ellen Forrester,"

with a cargo of one hundred tons of pig iron, left her wharf, in the harbor of Baltimore, to proceed down the Chesapeake Bay, out of the Capes and to her destination at Providence, R. I.

At the same time the Steamship Fannie, coming from Savannah, Ga., entered the Capes of the Chesapeake, to proceed up the bay, to her wharf in the harbor of Baltimore.

The two vessels were thus running upon the same line, in opposite directions, and approaching each other at a rate equal to the sum of their running rates.

The Schooner was running at the rate of seven knots. (Record p. 52.); the Steamship at the rate of about nine knots. (Record p. 21, 27, 33, 36.)

They were thus approaching each other at the rate of about sixteen knots an hour, a little more than a mile in four minutes.

So approaching, they encountered each other about two o'clock, in the morning of April 29th, off Point Lookout. The bay at this point is about ten or twelve miles wide. (Record p. 53.) Excluding shoals it is about six miles of clear deep water. (p. 30.)

The point of meeting was a little to the West of the centre of the bay, and as they met they collided, striking "head and head on." p. 17, 30, 33, 53.

By this collision the bow of the Schooner was crushed below the water line, and she sunk in from five to to ten minutes, giving the crew barely time to cut loose a boat, in which they made Point Lookout the next morning.

The Steamship did not stop, hail the Schooner, or offer any assistance; but continued on her course to Baltimore, and there made no report of the collision. (Record p. 10, 12, 13, 16, 17, 32.)

The legal obligations of vessels like these approaching each

other as these were, are too well settled to be a subject of discussion.

They were stated by this Court in

10 Howard 579, St. John vs. Paine,
do. 604, Newton vs. Stebbins,
18 Howard 570, Steamer Oregon vs. Rocca.
21 Howard 570, Chamberlain vs. Ward.
23 Howard 291, Haney vs. Baltimore Steam P. Co.

And to the law thus enunciated, was added the force of National Statute, by the declaratory Act of April 29, 1864.

15 Stat. at large 60, 61, Art. 15 & 16.

The only question therefore for decision in this case is the extent to which the respective vessels discharged, or disregarded their legal obligations.

1.—The Steamship, in the circumstances in which she was placed, was required by the Law to "*slacken her speed, or, if necessary, to stop and reverse,*" at all events to "*keep out of the way of the sailing-ship.*"

There is no dispute as to the course which she did pursue. All the testimony with reference to her course, comes from the officers and crew of the Steamship herself.

That testimony shows that the lights of the Schooner were discovered from the Steamer at a distance of four or five miles, and were distinctly visible from the time of their discovery until the instant of the collision; and yet the Steamship did no one of the things which the law requires.

She did not slacken her speed:

She neither stopped, nor reversed:

She did not "keep out of the way of the sailing-ship."

This total disregard of her legal obligations renders the Steamship responsible for all the damages resulting therefrom.

But this was by no means the full extent of the Steamer's dereliction. With power, through her steam-whistle, to give warning of the peril which could not fail to be heard, she was silent;—and when the injury had been done, she wantonly left the crippled vessel, and her crew to the more merciful winds and waves, and without stop or question slunk away in the darknesss, and making her port, gave no notice of the trifling incident.

All this wrong she excuses by the pitiful pretence that the Schooner, when in safety and out of the track of the Steamer, suddenly, and without any reason, changed her course and run across the bows of the Steamer. This is the excuse which was forcibly characterized by a late judge of this Court as "*the stereotyped excuse usually resorted to for the purpose of justifying a careless collision. It is always improbable and generally false.*"

Haney vs. Steam Packet Co. 23 How. 291.

II. The Schooner's duty under the law was very simple; it was merely to "*keep her course.*"

Whether she did, of did not "keep her course," is the question of fact mainly contested in this case.

The watch in charge of the Schooner consisted of two persons; and both testify positively that she did "keep her course." (See cross examination of Bryant p. 17, and evidence of Buckminster p. 52; Ans. 10,—and p. 53. Answers 26, 27, 28, 29.)

On the other hand those on board the Steamship testify that the Schooner "changed her course twice" after she was seen by them before the collision. (Williams p. 18, 20, 21, 22. Shorter 23, 24, 25. Billups 35, 36, 37.)

1. If it be conceded that the witnesses are equally truthful, it must be noted that those on board the Schooner cannot be mistaken. They speak of what they themselves did. If their evidence is not true it is deliberate perjury. But those on board the Steamship may very well be mistaken. They had no opportunity for observation. They were themselves in rapid motion, unable to see the Schooner herself at all, and inferring her course and movements only from her lights, the view of which might, in many ways, be temporarily obstructed.

The evidence of Witnesses so situated is at best, but inference or opinion, and as was well said by Judge Betts, "affords no satisfactory or reliable evidence of the actual facts of the transaction."

Steamboat Narragansett. Olcott's Rep. 247.
Sloop Argus. " " 306.

"What a witness asserts he did or did not do on his own vessel at the time, is generally more satisfactory evidence of the facts, than the opinion and belief of a dozen others formed from what they supposed they saw or heard on another vessel." The Steamboat Neptune. Olcott 495.

2. No reasonable motive can be assigned for a change of the course of the Schooner. She had a fair wind to take her to her destination without tack or divergence. She could not have anticipated that her own safety would require a change of course, or that an upward bound Steamer with open sea room to run three or four miles, either to the right or left of her, would put her in any peril; and the officers in charge of her was perfectly familiar with the law, which required her to "keep her course." (Record p. 53; answers 28, 29.)

3. The statements of the witnesses who testify that the Schooner changed her course are confused, conflicting and unworthy of belief. Each witness contradicts the others, and each contradicts himself.

They substantially agree however as to the distance of the schooner at the time she was first observed by them. Williams says she was seen "some fifteen or twenty minutes before the collision," (record p. 19.) Billups says "it was fifteen to twenty minutes before the collision that I saw the Ellen Forrester." (Record p. 34 and 5.) Shorter says "she was about four miles off when we first saw her." (Record p. 23.)

These parties all claim that the first alteration in the course of the steamer was made by porting her wheel.

Billups says "this alteration was made in the course of our steamer *a few seconds* after we saw the light." (Record p. 35 and 8.)

Williams says "the schooner *got pretty close to us.* The Mate gave us orders to port our wheel." (Record p. 18.)

Shorter says "the schooner was from twenty to forty yards from us when we ported our wheel." (Rec. p. 24.)

Again Williams says "I suppose we were a mile as near as I can come at it from the schooner at the time when we were first ordered to port the wheel." (Rec. p. 20.)

The next pretended change in the course of the steamer was by an order to starboard the wheel.

Williams says "after porting our wheel I don't suppose we ran fifty yards before the next order was given to starboard." (Record p. 20.)

Shorter says " the schooner after luffing did not sail very far, about fifty yards before she lay off on the other tack." (Record p. 25.)

Billups says "some *few minutes* elapsed between my first order to port our wheel and my order to starboard her." (Record p. 36.)

The testimony of each is equally contradictory of itself. For example Williams says I suppose we were a mile from the schooner at the time we were first ordered to port the wheel.—After porting I don't suppose we ran fifty yards before the next order was given to starboard. After the order to starboard "we had not run twenty yards' before the last order to port our wheel. After this order "by the time we got our wheel hard aport we were together." (Record p. 20.)

In like manner Shorter says when I saw the schooner luff she was "not over a mile off." After luffing she "did not sail very far—about fifty yards before she lay off on the other tack" and after her last change of course "she sailed from forty to sixty yards" before the collision. (Record p. 25, 26.)

Upon testimony so confused and conflicting a Court could place no reliance, and base no action, even if it were not, as in this case it is, distinctly contradicted by those who had the best opportunity to know the facts; the men, to wit, who were in charge, at the time, of the vessel which is alleged to have made these swift, causeless, inexplicable changes of course.

Besides, *it is impossible*, that the changes of the course of the vessels could have been made in such swift succession as is testified by these witnesses. Their opinion of the schooner's change of course rests entirely on their view of her lights, and no vessel that sails, obeys her helm quick enough te produce so rapid an alteration of lights as they pretend to have seen on the schooner. And if it could so take place it would not be the creation of a new peril, but would leave the vessels in the same relative position to the line of their respective courses which they occupied before.

Unless these changes did take place so as to make the Schooner the cause of her own injury the Steamship is inexcusable, and legally bound to pay *all* the damages resulting from the collision. And if they did take place, she is still

more inexcusable; because the changes would show to those on board the Steamer that the Schooner was in doubt, uncertain as to the precise course and wish of the Steamer; and they called upon her to signal her intention by the use of her steam whistle, or to obey the law and "slacken her speed, or if necessary stop and reverse."

III. The Decree of the District Court, and that of the Circuit Court, so far from giving the Appellants any cause of complaint, impose too large a portion of the loss upon the owners of the Schooner.

The Appellees contend that under the circumstances, the entire loss should be paid by the owners of the Steamship.

The Decree allows the owners of the Schooner only $6,000 00 for her loss. All the evidence given by parties who know the Schooner, agrees that she was worth at the time of the collision from $7,500 00 to $8,000 00. (See evidence of Capt. Allen, p. 10, 11. S. G. Buckminster, p. 13, 53. David F. Warren, p. 41. Thomas Warren, p. 41. George Tolman, p. 42. James Carey Coale, p. 56.)

The witnesses who rate her of less value, had either never seen, or never examined the vessel, and had no actual knowledge of the class of vessels to which she belonged.

The Decree therefore throws upon the owners of the Schooner the loss of nearly one-fourth of her value.

So far is this within the limit which might justly have been awarded against the Appellants, that the Appellees contend that the Decree should be reformed and larger damages allowed.

If this is inadmissible, they contend that the principle of the 23d Rule of this Court, and of Hemmenway vs. Fisher, 20 How. R. 260, should be applied and the largest per centage of interest on the Decree allowed.

HENRY STOCKBRIDGE,
Counsel.

Supreme Court of the United States.

STEAMER FANNIE,—THE BALTIMORE AND SAVANNAH STEAMSHIP COMPANY,—CLAIMANTS,

APPELLANT,

vs.

THE SCHOONER ELLEN FORRESTER,—DANIEL ALLEN ET AL.—CLAIMANTS.

Appeal from the Circuit Court of the United States for the District of Maryland.

APPELLANT'S BRIEF.

THIS is an Appeal by the Baltimore and Savannah Steamship Company, claimants of the Steamer "Fannie," from the Circuit Court of the United States for the District of Maryland, sitting in Admiralty.

It was a case of collision occurring in tho Chesapeake Bay, between the Steamer "Fannie" and the Schooner "Ellen Forrester."

The libel was *in rem* filed by the Appellees, against the Steamer "Fannie."

The Baltimore and Savannah Steamship Company, intervened as the owner of the "Fannie."

The District Court decreed in favor of the Libellants in the sum of $10,365 and costs.

On an Appeal by the Steamship Company to the Circuit Court, additional evidence was introduced, as to the loss sustained by one of the crew of the "Ellen Forrester," and the decree of the District Court was reversed, and a decree entered in favor of the Libellants in the sum of $10,465 with interest till paid, and costs.

The amended Libel [pages 7 and 8 of printed Record,] states "that on the 28th April, 1868, the Schooner sailed from Baltimore, Maryland, with a cargo of pig iron, on a voyage to Providence, Rhode Island.

"That during the voyage, about ten minutes before two o'clock on the morning of the 29th April, 1868, the Schooner being then about four miles from Point Lookout Lighthouse, with the wind about north-east, said Schooner standing on her course, 'south by east, one-half east," the mate, who then had the watch, and was the commanding officer on deck, discovered a Steamer approaching, which turned out to be the "Fannie," but saw no lights or signals on, or from her, and, before he was able in the darkness, to ascertain her bearing and direction, or take any steps to avoid a collision with her, the said Steamer ran against and struck the said Schooner on her port-bow, injuring her so, that she filled with water, and within ten minutes of such collision sunk, and was with her cargo totally lost.

"That when the 'Fannie' was first discovered, the lights of the Schooner were in proper place and condition, and could easily have been seen from the Steamer, and *if she had kept a good look-out*, must have been seen by her at a considerable distance, and in season to have enabled her to give way and prevent a collision. And at the time when a collision first became imminent, if the Steamer had had a proper watch on deck, she could by changing her course have passed the Schooner in safety, or by stopping the engines, have so slackened her speed as greatly to have diminished the violence of the blow; but instead of so doing, she kept on her previous course, and made no effort to prevent a collision, or weaken the force thereof. Then stating the value and nature of the property lost, the Libel concludes with the charge, that the damages sustained, were caused by reason of the careless, negligent and unskillful management of those in charge of the Steamer."

The answer admits the collision and alleges, "that on the morning of the 29th April, 1868, about one and a half o'clock the Steamer "Fannie" was steering a north by west course up

the Chesapeake on a voyage from Savannah to Baltimore, when those in charge saw the lights of the Schooner *one point on Steamer's port-bow, some* four miles distant, said Schooner bound apparantly down the Bay in a south by east course. That the courses of the respective vessels were such, at the time, as to afford ample room for them to pass without danger of collision, and that they would have done so had the Schooner adhered to the course she was on. Nevertheless, the wheel of the "Fannie" was ported so as to throw them further apart. That, shortly after this, the Schooner altered her course to the eastward, across that of the Steamer, which seeing, the latter starboarded her wheel so as to go west of the former, when suddenly the Schooner fell away from the wind westward across the last taken course of the Steamer. The Steamer's wheel was then put hard-aport, but by this time they were so near each other that it was not possible for the Steamer to avoid a collision, and their port-bows struck in passing.

"That the said Steamer, when she left the port of Savannah on her voyage to Baltimore, and during the whole of said voyage, was in every respect fully equipped, provided, officered and manned.

"That their lights were excellent and were displayed in their proper places, both at the moment and long before the collision.

"That proper and efficient lookout was kept on board of her during the whole voyage, that the said collision and damage was not produced by any fault or negligence on her part, but was produced solely by the ignorance, want of skill, negligence and mismanagement of those in charge of the Schooner."

Before examining the evidence, the Court is referred to the following rules applicable to cases of collision:

Certain Rules of Navigation, as declared by the Act of Congress of the 27th April, 1864, *ch.* 69.

"*Article 15th.*—If two ships, one of which is a sailing ship and the other a steamship, are approaching in such directions as to involve risk of collision, the steamship shall keep out of the way of the sailing ship.

"*Article* 18*th*.—Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course; subject to the qualifications contained in the following article.

"*Article* 19*th*.—In obeying and construing these rules, due regard must be had to all dangers of navigation, and due regard must also be had to any special circumstances which may exist in any particular case, rendering a departure from the above rules necessary, in order to save immediate danger.

"*Article* 20*th*.—Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequence of any neglect to carry lights, or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

13th U. S. St. at Large, page 58.
2 Brightly's Dig. 428—429.
1 Parsons' on Sh. & Ad. 548, 592.

The generally established rules and known usages should be carefully followed; for every vessel has a right to expect that every other vessel will regard them.

1 Parsons' Sh. and Ad. 580.
Str. Oregon *vs.* Rocca, 18 How. 570, 572.
Newton *vs.* Crockett, 18 How. 581, 583.

General Rules determined by the Courts concerning the loss and the party upon whom it falls.

"1st. The party in fault must suffer his own loss, and compensate the other party for what loss the latter may sustain.

"2nd. If neither be in fault the loss rests where it falls.

"3rd. If both are in fault the loss shall be divided between them, unless they are both willfully in fault, in which case the loss rests where it falls.

"4th. If there is reasonable doubt as to which is to blame the loss must be sustained by the one on which it has fallen.

5th. "In cases of inscrutable fault, or where there is fault somewhere, but it is impossible to tell which is to blame, the loss rests where it falls."

1 Parsons' on Sh. and Ad. 525. &c.
1st. Conkling's U. S. Ad. 371 to 382.
Union St. Ship's Co. *vs.* N. Y. V. St. Sh. Co. 24 How. 313 314.
Sturges *vs.* Clough, 21 How. 451.
The Grace Girdler, 7 Wallace, 196, 203.
Starbuck *vs.* Roe, 14 How. 532, 538.
The Morning Light, 2 Wallace, 556.

Other General Rules established in collision cases.

In a cause of damage for injury sustained by collision, "the burthen of proof to establish the charge of negligence, or want of skill rests in general upon the Libellant; in other words, in order to entitle him to reparation, there must be a preponderance of evidence in his favor."

Conkling's Ad. 2nd. Ed. 382.
The Catherine of Dover, 2 Haggard, 145, 153.

A Plaintiff in a cause of collision, "must prove both care on his own part, and want of it in the Defendant; and if a collision has happened, and one vessel has been guilty of some negligence, the burthen is on her to prove, that this negligence is not the cause of the collision."

1 Parsons' on Sh. and Ad. 528, 529.
The Steam Tug Wm. Young, Olcott 41.
The Relief, Olcott, 104.
The Columbus, Abbott's Ad. R. 384.
The Steamboat New Jersey, Olcott, 419, 420.

Keeping in view the preceeding Rules, let us now examine the pleadings and evidence, for the purpose of ascertaining where the fault lies and upon whom the loss should fall.

And the Appellants contend;

That the evidence on the part of the Libellants (Appellees) is uncertain, unsatisfactory and insufficient; that any pre-

sumption or conclusion to be drawn from it favorable to the Appellees, is rebutted by other evidence in the cause showing that the schooner was in fault, and that there was no want of care and no error of judgment on the part of the steamer, in any respect.

That after the approach of the schooner had been ascertained by those in charge of the steamer, and the latter had elected upon which side to pass the schooner, the schooner changed her course; that such change of course was the proximate and only cause of the collision, and if such change had not been made, the vessels would have passed each other in safety.

That, regardless of the management or conduct of those in charge of the steamer, as it may appear from the evidence, the evidence shows fault on the part of the Appellees, such as must prevent them from recovering for more than a divided loss.

There is no credible and sufficient evidence in the cause, to satisfy the Court, that the "Ellen Forrester" held her course as required by the 18th Article of the Rules of Navigation, and such evidence is indispensible to the Libellants' case.

See 18th Article of Act of 27th April, 1864, ch. 69.
The Steamboat New Jersey, Olcott, 419.
The Steamboat Neptune, Olcott, 483.
Haney *vs.* Balt. St. P. Co. 23 How. 209.
The Santissima Trinidad, 7 Wh. 339.

The Rules of Navigation should be carefully followed.
18 How. 570–583.
The Vanderbilt, Abbott, 561–564.
N. Y. & L. U. S. M. St. Sh. Co. *vs.* Rumball, 21 How. 372, 384.
Peck *vs.* Sanderson, 17 How. 181.
1 Parsons' Sh. & Ad. 593, note 4.
The Potomac, 8 Wallace, 592.
The Relief, Olcott, 104.

The highest degree of caution that can be used is not required of the Steamer; it is enough if it is reasonable under the circumstances. The Grace Girdler, 7 Wallace, 206.

It was contended by the Libellants that the Steamer ought to have reversed her engine and stopped; and they invoked the aid of the 16th Article of the Act of 1864.

This is denied by the Appellants and they contend that the 16th Article does not apply to this case.

This Article must be construed with the other rules and prevailing laws of the sea.

1 Par. Sh. & Ad. 593–597, and case of Kelly *vs.* Thompson, cited in note 3.

New York and Liv. U. S. M. St. Sh. Co. *vs.* Rumball, 21 How. 384.

The Fairbanks, 9 Wallace, 422.

The law presumes, and indeed requires intelligence and vigilance on both sides, and will not excuse, protect, or tolerate recklessness and blind indifference. Those in charge of the Schooner were under a legal obligation to see the Steamer, to note her bearings, and to hold their course intelligently, and with care and constant reference thereto, and this is true of her original course, as well as that which she was upon when she changed to the eastward; and if they were faulty in either, and the collision can in any way, either wholly, or partially, be attributed to such fault, they must bear the consequences; provided, reasonable care and caution, is shown to have been exercised on board the Steamer; of which, if her testimony is believed, there can be no doubt.

The Neptune, Olcott, 191 to 196.

The Grace Girdler, 7 Wallace, 206.

It can not be contended that the Steamer was called upon to stop, unless the peril was imminent, or, in the language of the 16th Article itself, unless there was a "necessity" for her so doing; then the inquiry is, which boat is to blame for producing the peril, the necessity? Upon the theory of the Appellants, the Schooner, certainly. She twice changed her course; this produced the peril. She therefore is to blame.

The Carroll, 8 Wallace, 305.

It may well be questioned, whether or not the 16th Article is generally applicable to cases of collision occurring upon the high seas, or on waters where the vessels have plenty of sea room? In examining the cases in which the rule has been enforced, we find them mostly such as have happened in harbors, or narrow channels, or when the Steamer is approaching an object in the night, and is uncertain what it is.

See the Steamer Louisiana *vs.* Schooner Fisher, 21 Howard, 5, and cases cited on page 6, viz: 3 W. Robinson, 75; 2 W. Robinson, 271. The Genesee Chief, 12 How. 463—narrow channel.

It is not seen in what respect the Steamer was in fault.

The Potomac, 8 Wallace, 590.

It is contended lastly—That the Schooner was in fault, by reason of the carelessness and negligence of those having her in charge; and for want of a vigilant, and proper lookout.

In regard to carelessness and negligence, and the insufficiency of the lookout, there can surely be no more convincing proof than that which is contained in the simple fact that the vessels came in collision without those on the Ellen Forrester being aware of the Steamer's approach. That the Fannie's lights were brightly burning, there can be no question. That they should not have been seen from the Ellen Forrester, had proper care and due vigilance been exercised, the ordinary care and vigilance which the law exacts of all who navigate the water, is simply impossible. In the case of Peck *vs.* Sanderson, 17 How. 182; 21 Curtis' Dec. S. Ct. 443,) this Honorable Court, denouncing the not seeing the Steamer's light as a great negligence, says:

"It is impossible that a vessel lighted up as the Steamer was should not have been seen by the Schooner had the latter maintained ordinary care and watchfulness." And in the case of the Potomac it uses language to the same effect. . "If the persons on board the Steamer were watchful, it was not the case of those in control of the Schooner, for if they had been equally attentive to their business, they would not have allowed the Steamer to have

approached within a half mile without being seen by them." 8 How. 593.

In Article 4 of the Libel it is alleged that "the lights of the Schooner could easily have been seen from the Steamer, and must have been seen at a considerable distance had she kept a good lookout," thus by their own admission showing that, by parity of reasoning, no good lookout was kept on board the Schooner, for she never saw the Steamer's lights at all.

The Schooner was also in fault for not having a lookout stationed in the proper place.

"It is the duty of each vessel to have a lookout, acquainted with his duty, and faithfully discharging it, and stationed at that part of the vessel which will best enable him to see any impending danger, and promptly warn the helmsman of the point. from which it is approaching." 23 How. 295; see also 1 Parsons' on Sh. & Ad. 576, note 7; see also Whitridge *vs.* Dill, 23 How. 453.

"The position of a lookout should be forward, it should not be where sails obstruct the view." Peck *vs.* Sanderson, 17 How. 177. In sailing vessels it is uniformly at the bow, otherwise the sails would obstruct the view." Opinion of Chief Justice Taney, Haney *vs.* Balto. St. Packet Co., 23 How. 303; The Fairbanks, 9 Wallace, 423.

"It is justly regarded by maritime courts a delinquency in a vessel which fails to keep a competent lookout properly stationed, that renders her responsible for the consequences of collision, unless the clearest proof is made that the omission was in no way the cause of the disaster. And the burthen is on the Libellant to make this proof," 1 Parsons' Sh. & Ad. 595 and 596; the Grace Girdler, 7 Wallace, 203. The earlier and modern cases concur in this doctrine, and establish the maintenance of an adequate lookout as a necessary measure of precantion, the neglect of which casts the responsibility for accidents on the delinquent vessel and her owners. The Chester, 3 Hagg. 316 ; the Diana, 1 W. Rob. 131 ; the brig Emily, Olcott's R. 137 and 138 ; the pilot boat Blossom, Olcott, 194.

It is our duty in this, as in all cases, to reconcile conflicting testimony as well as we can, without attributing to either party, if it can be avoided, wilful and direct perjury. With this principle before us we can explain the Appellee's case only upon the following theory.

The "Ellen Forrester" had left Baltimore about 10 o'clock on the morning of the 28th April, 1868, and on the following morning, between 1 and 2 o'clock, was pursuing her voyage down the Chesapeake bay, before a seven knot north-easterly breeze, with all her sails set and trimmed to the starboard, when her red light was first seen by the steamer. Her course had been, and was at the time, the usual one for vessels on similar voyages. It was in the spring time, the weather was a little overcast, but not dark or stormy; the lights of vessels in passing were visible several miles away; "nothing had occurred of any importance," nothing to excite particular watchfulness or apprehension, and they were sailing along in listless security, paying no particular attention to approaching objects, or to the movements of their own vessel, otherwise than to keep her on the general course down the bay. All the evidence offered by the Libellants as to her course shows this, and nothing more; and this general course is sufficient for ordinary purposes; but is very different from, and altogether inadequate to the maintenance of that steady course required by the law, when "sailing vessels and steamers are approaching each other, in such directions as to involve risk of collision." Now every one, who has the least familiarity with seamanship, knows the strong and constant tendency of vessels, particularly fore and aft rigged vessels, such as schooners, &c., when sailing on a wind, to luff or edge up to the windward of their courses; to counteract which tendency, the helm of the vessel has to be kept more or less to the windward, dependent upon the varying strength of the wind and the course the vessel desires to pursue. The Court is familiar with the phrase "a weather helm."

Hence it is, that unless constant vigilance is preserved by the man at the wheel, the vessel is constantly yawing off her true course, first to the right and then to the left, it may be several points, as she luffs in obedience to the tendency spoken of, and then is steered to leeward again in order to resume her general course. In this way, seen from an approaching vessel, she would appear precisely as the Ellen Forrester appeared to those in charge of the steamer, alternately shutting out and revealing her red and green lights, or showing some times both as she swung off and on, and not only presenting the appearance of a vessel changing her course, but actually changing it, first to the westward and then to the eastward, and back again, as the case might be; the

time of her continuance upon each course, and the distance run, depending upon the negligence or attention of the wheelsman or officer in charge.

The Libellants proved by Billups, on cross-examination, (Record, p. 37,) that at three miles distance from the steamer, either of the schooner's two lights would be shut out or disclosed by a variance of her course two points either way.

And thus it may have been with the "Ellen Forrester"! There was no intentional, perhaps, no conscious change of course; but by the carelessness of those having her in charge, and the pressure of the north-eastern wind on her heavy stern sails, she was alternately luffing to the eastward across the steamer's bows, and running off to the westward again in resumption of her course, and thus "put herself carelessly in the way of the former, and rendered ineffectual her movements to give her sufficient berth." (The Potomac, 8 Wal. 590.) If she had kept adequate lookout, if she had seen the steamer, if she had held steadily to her course, the collision would not have occurred.

By the words "keep her course," as found in the 18th Article of the rules of navigation, is meant, as heretofore stated, an intelligent keeping of a steady and certain course; a "keeping" in accordance with the requirements of the 19th Article of the Act, a keeping, "with due regard to all dangers of navigation, and due regard to any special circumstances which may exist in any particular case, rendering a departure from the above rules necessary, in order to save immediate danger." (See 19th Article.) This necessarily involves vigilance, and a lookout adequate to the occassion. How otherwise, can "her course be kept" *with due regard* to the circumstances referred to? And how otherwise is it to be known when the special circumstances exist, and when they render a departure from the rules necessary? Therefore, under the Rules of Navigation, whenever a sailing vessel is required to keep her course, a proper lookout, is an indispensable accompaniment, and under the 19th Article, nothing in the Rules requiring the Steamer to keep out of the way, to slacken her speed, or to stop, shall exonerate the sailing vessel from the consequences, arising from the neglect of any precaution, which would enable her to know when the special circumstances referred to exist, and when a departure from the rule is necessary.

Now, assuming, for the sake of the argument, that the "Ellen Forrester" had kept her course, and that the Steamer was in fault

for not avoiding her, or for not stopping, yet, if by porting the Schooner's helm, when called on by Captain Johnson, so to do, just before the collision, she could have avoided it, and she was unable so to do, because she was unaware of the Steamer's approach by reason of the inadequacy of her lookout: then, she must also be considered in fault by reason of such inadequacy.

This is the logical conclusion, drawn from the rules when construed together.

Analogous to this, is the view taken by this Court, in the case of the Grace Girdler, 7 Wallace, 203.

"The 17th Article does, as suggested, provide that every vessel overtaking another vessel, shall keep out of the way of the said last mentioned vessel. But the 18th Article provides, subject to certain qualifications, that the other vessel shall keep her course; while the 19th and 20th, provide that due regard shall be had to the circumstances, which may render a departure from the rules prescribed necessary, in order to avoid immediate danger, and that nothing in the Act, shall warrant the neglect of any proper precaution, or excuse the fault of bad seamanship, under any circumstances that may occur."

If there are special circumstances from which it clearly appears that the sailing vessel can prevent a collision otherwise inevitable, by a departure from her course, she is bound to make it.

The Vanderbilt, Abbott, 363 and 366.
N. Y. & Liv. M. S. Ship Co. *vs.* Rumball, 21 How. 385.
Crockett *vs.* Newton, 18 How. 581 and 583.
1 Parsons' Sh. & Ad. 581, n. 2.
1 Conkling U. S. Ad. 410, 411 and 412.
The Commerce, 9 En. Ad. R. 288.
Crockett *vs.* Newton, 18 How. 581.

It follows as a corollary that the sailing vessel should be kept in such condition as to lookout, &c., as to enable her to see and note such special circumstances in order to be able to act, and she is necessarily in default if she is not in such condition when the danger approaches.

And if by negligence, or want of ordinary vigilance, he fails to see or forsee the danger, he is in default therefor.

"The Schooner was therefore in default for not seeing the approach of the Steamer, and for not porting her wheel and making an endeavor to avoid her when the collision became imminent.

For a full exposition of the law in collision cases, and its requirements in regard to a lookout, see the opinion of Chief Justice Taney, in the case of Haney *vs.* The Baltimore Steam Packet Co. 23 How. 294.

The majority of the Court differed with the Chief Justice in construing the facts of that case, but I am not aware that the general rules and principles of law, as laid down by the latter, have ever been controverted.

The question was asked, (page 52 of Record,) if the steamer stopped or slackened her speed after the collision? And on page 53, if she gave any signal, rang a bell or blew a whistle, before the collision? The evidence shows that she did slacken her speed after the collision, but the blow being a glancing blow, and no great concussion or shock being produced thereby, those in charge of the steamer had no idea of the extent of the damage done to the schooner, and hearing no call for assistance, proceeded on their course.

In regard to ringing a bell and blowing the steam whistle, they are acts applicable to cases between steamers, and are not applicable to cases such as the present.

1 Parsons' Sh. & Ad. 558 and 559, and case of Western Metropolis, cited in note 1.

REVERDY JOHNSON,
ANDW. STERETT RIDGELY,
Proctors for Appellants.